

## H-2200-1 LAND EXCHANGE HANDBOOK

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## **H-2200-1 LAND EXCHANGE HANDBOOK CHAPTER 1**

### **Chapter 1 Overview of the Land Exchange Process**

This exchange handbook is a tool to direct the Bureau of Land Management (BLM) and the public on the processing of land exchanges. Most of this handbook gives direction based upon regulations in 43 CFR 2200; the balance tries to focus on the intent of the Federal Land Exchange Facilitation Act (FLEFA) of 1988 to facilitate land exchanges. The following chapters provide direction based upon experience but also gives each State the flexibility to complete land exchanges in a manner suited to its organization.

#### **A. How do land exchanges improve public land management?**

Land exchanges are important tools used to consolidate land ownership for more efficient management while bringing important resources into public ownership. A land exchange is a real estate transaction where the disposal (sale) and acquisition (purchase) are combined in the same transaction or series of transactions. A land exchange is BLM's preferred method of land disposal. The procedures described in this handbook allow the flexibility to successfully complete land exchanges. In the absence of regulatory requirements, use the procedures discussed to guide your action. The Bureau of Land Management's authority to exchange land or interest in land is Section 206 of the Federal Land Policy and Management Act (FLPMA) as amended. Interest in land is an estate, right, title, claim, or legal share that includes the advantages accruing from land ownership. A right to cut a specified amount of timber is an interest in land. A royalty is an interest in land because it is a right to receive a legal share of the proceeds resulting from use of land.

#### **B. Three Types of Land Exchanges**

##### **1. What is a traditional land exchange?**

Traditional land exchanges typically involve nonfederal land owners trading their land or interest in lands for Federal land or interests. The parties involved transfer title (ownership) to the lands involved in a single closing transaction. We usually refer to the nonfederal land owner with whom BLM is completing the exchange as the proponent. As with all exchanges, we must show that the exchange is in the public interest, and that the relative values of the land involved is equal. If the values are not equal you must equalize them before closing the transaction.

##### **2. What is an assembled land exchange?**

An assembled land exchange is an exchange in which several Federal or nonfederal parcels are combined and exchanged in one or more transactions over time. An assembled land exchange agreement, which allows multiple transactions, may be started at any time before a conveyance document is issued. Assembled land exchanges are discussed in Chapter 14.

##### **3. What is a competitive land exchange?**

Competitive land exchanges allow competitive bidding for Federal lands being considered for disposal. BLM processes competitive exchanges in the same way as noncompetitive exchanges. Competitive exchanges have an initial invitation for bids and use the high bid to set market value of the Federal land. BLM may manage the bidding process for these transactions or use a third-party facilitator. Chapter 15 contains information on the competitive exchange process.

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**C. Should you use a project management approach?**

The exchange process is complex and involves many resource specialists. Early and consistent involvement with all effected staff is critical to the success of the project.

Although processing an exchange is complex, managing the complete project need not be an overwhelming task. You will greatly increase your chances for success if you approach an exchange as you would any other major project. In very simple terms, you should figure out what work needs to be done, who can do the work, and how long it will take. Once you have defined the scope of work, you can develop a strategy for completing the exchange. Your strategy should clearly define the specific tasks that must be done, who will be responsible for completing each task, and when the task must be completed.

For each exchange project, you should consider establishing a core team whose sole purpose is to ensure that the project is completed in a timely manner. The core team would normally consist of two to four members, depending upon the complexity of the project, who would be responsible for general project processing. The skill mix on the core team will depend on the resources or issues involved, but would normally include a realty specialist, appropriate resource specialist and an appraiser. Supplement the core team with an adjunct interdisciplinary team that has primary responsibility for the studies and reports required to comply with the National Environmental Policy Act (NEPA).

Besides the core team, you also need a designated project manager who has general responsibility for completing the project. A key role of the project manager is to track progress of individual tasks assigned to the various team members and other supporting staff.

There are software packages available for tracking the numerous tasks necessary to complete an exchange. For example Microsoft's Project Manager program will automatically adjust your projected completion date in the event that a critical task is not completed when scheduled. Before you acquire a software package you need to make sure that it is approved for use in your office. However, you may also use Word Perfect, Lotus, DBASE, or any other software available through standard Bureau computer packages. Illustration 1 provides an example of how you may use Word Perfect to help manage a land exchange project.

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#### D. What are the steps involved in a land exchange?

The following table summarizes the steps in processing a land exchange. For more details refer to the referenced chapters.

Table 1-1 - Land Exchange Processing Steps

RESPONSIBLE OFFICIAL	PROCESSING STEP	REFERENCE CHAPTER
	<b>Phase I INITIAL EVALUATION OF EXCHANGE PROPOSAL</b>	
Field Manager	<b>A.</b> Holding informal meeting. Before submitting a formal proposal, potential exchange proponents should meet with BLM staff. This meeting provides a forum for discussing exchange processing procedures, preliminary review of nonfederal land title and informally sharing ideas about proposed land exchanges. This informal review can eliminate proposals that are obviously unacceptable and result in more complete exchange proposals.	Chapter 2
Field Manager	<b>B.</b> Field office staff conducts preliminary review. Initial review of the exchange proposal concerning land use plans, natural resources, land status, land values, funding capabilities, and manageability of nonfederal lands.	Chapter 2
Field Manager	<b>C.</b> Developing and evaluating exchange proposals.	Chapter 2
Field Manager	<b>D.</b> Preparing the feasibility analysis documenting the public interest determination and serving as a communication and coordination tool between staffs at all levels of the organization.	Chapter 2
Field Manager	<b>E.</b> Creating a serialized case file for the proposal. Request notation of public records, and segregation of the Federal lands.	Chapter 2
Field Manager	<b>F.</b> Executing an Agreement to Initiate (ATI) an exchange.	Chapter 4
	<b>Phase II Documentation</b>	
Field Manager	<b>G.</b> Publishing and mailing out the notice of exchange proposal (NOEP), an informational notice describing the exchange proposal and providing for public comment.	Chapter 5
Field Manager	<b>H.</b> Requesting an appraisal.	Chapter 7
Field Manager	<b>I.</b> Conducting detailed resource analysis and environmental documentation, including: <ol style="list-style-type: none"> <li>1. Mineral potential report</li> <li>2. Cultural and historic report</li> <li>3. Wildlife and T &amp; E animal report</li> <li>4. Botanical and T &amp; E plant report</li> <li>5. Contaminant inventory</li> <li>6. NEPA documentation</li> </ol>	Chapter 6
Field Manager	<b>J.</b> BLM and the exchange proponent reach agreement on the relative values of the Federal and nonfederal lands.	Chapter 7

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RESPONSIBLE OFFICIAL	PROCESSING STEP	REFERENCE CHAPTER
Field Manager/ State Director	<b>K.</b> Use of arbitration, bargaining or other methods to resolve disputes over value	Chapter 8
Field Manager	<b>L.</b> Completing the decision document consistent with the NEPA analysis, appraisal, and other documentation requirements.	Chapter 6
Field Manager	<b>M.</b> Publishing and mailing Notice of Decision (NOD) on the exchange. If a protest is filed the Field Manager will analyze the protest and forward a recommended response to the State Office. The State Office will issue a decision in response to the protest. The State Office protest response decision is appealable to IBLA in accordance with 43 CFR part 4 and must contain an appeals paragraph.	Chapter 9
	<b>Phase III TITLE TRANSFER</b>	
Field Manager	<b>N.</b> Enter into a binding agreement when required to complete the exchange. BLM must use a binding agreement when contaminants are present.	Chapter 10
Field Manager	<b>O.</b> Sending case file to the State Office and requesting conveyance documents.	Chapter 10
Field Manager/ State Director	<b>P.</b> Equalizing values - determination of the methods to equalize values in the exchange.	Chapter 11
State Office/ Regional Solicitor	<b>Q.</b> Securing Solicitor approval of: 1. title evidence, 2. conveyance documents, 3. escrow and closing instructions, 4. binding exchange agreements, 5. any other closing documents.	Chapter 12
State Office	<b>R.</b> Completing closing actions.	Chapter 13
State Office/Field Office	<b>S.</b> Completing Field Office and State Office post-conveyance actions.	Chapter 13
	<b>OTHER INFORMATION YOU WILL WANT TO KNOW</b>	
Field Manager	<b>T.</b> Assumption of cost. The aspect of the exchange process that defines how each party will share the costs of completing the exchange.	Chapter 3
Field Manager/ State Director	<b>U.</b> Assembled land exchanges. An exchange process that consolidates multiple parcels of Federal and nonfederal lands for one or more exchange transactions over time.	Chapter 14
Field Manager/ State Director	<b>V.</b> Competitive land exchanges. Use of competitive proposal and bidding exchanges.	Chapter 15



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RESPONSIBLE OFFICIAL	PROCESSING STEP	REFERENCE CHAPTER
State Director	<b>W.</b> Other Federal agency land exchanges.	Chapter 16

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## H-2200-1 LAND EXCHANGE HANDBOOK CHAPTER 2

### PHASE I: INITIAL EVALUATION OF THE EXCHANGE PROPOSAL

#### Chapter 2 Developing and Evaluating Exchange Proposals

##### A. How is an exchange proposal developed?

Before developing a formal proposal for a land exchange, BLM and other parties to the exchange should meet to discuss, evaluate, and share information and ideas about the proposed exchange. This informal meeting can eliminate unacceptable land exchange proposals and result in a more effective exchange process.

##### B. What information should you discuss?

The content of the exchange proposal will vary, but you should discuss the following items. You may want to use a standardized Agreement to Initiate an exchange (ATI) to guide your discussion. The ATI (discussed in Chapter 4) contains important aspects of an exchange and provides a good forum for considering the implications of the process.

1. **Legal Description.** Use the Public Land Survey System to describe Federal lands. You have more flexibility in describing nonfederal lands. As part of the feasibility analysis process, you should review survey needs and nonstandard descriptions (metes and bounds) for acceptability by the State Office's Cadastral Surveying Group.
2. **Preliminary Title Evidence.** Title evidence is a concise source of existing rights (mineral, water, etc.) for conveyance as well as encumbrances or restrictions that may make a proposal unacceptable. Title evidence will help in preparing the Agreement to Initiate (ATI) and in verifying that a proponent controls the property.
3. **Map of Lands Being Exchanged.** Use maps of a suitable scale to help in the initial evaluation of the proposal.
4. **Preliminary Estimate of Value Appraisals.** Estimate approximate value of the lands and interest involved based on comparable sales of similar properties. Consider obtaining a preliminary estimate of value from appraisal staff to set the relative amount of land to consider in the exchange. If the nonfederal lands have some unique properties, the proponent may wish to document the effect on value from some existing source. Refer to Chapter 7 for information on the appraisal process.
5. **Intended Land Use.** You need to gather information on the intended future use of the lands involved in the exchange to comply with NEPA and communicate with the public about the exchange proposal.
6. **Assumption of Cost.** Although you will formally address assumption of costs in your Agreement to Initiate an exchange, you should also discuss how BLM and the proponent will share processing costs. For example, an exchange relying on Federal land value credit for processing costs may not be acceptable. Refer to Chapter 3 for information on assumption of costs.

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- 7. Consistency with Land Use Plans.** Review the existing land use plan (RMP or MFP) decisions. If the land exchange proposal would carry out decisions or meet objectives in land use or activity plans, these proposals should be considered. Exchange proposals that conflict with a land use plan cannot be completed unless BLM amends the plan.
- 8. Review of Federal Land Status.** Check land status to determine if Federal lands are under the jurisdiction of the BLM and available for exchange. Also, review withdrawals, mining claims, other mineral encumbrances, and land classifications to determine if they would preclude the exchange.
- 9. Preliminary Review of Resources.** Review existing inventory data to find out if the nonfederal lands contain any special resources and what resource losses would result from disposal of the Federal lands. This preliminary review should include at least threatened and endangered species habitat, known cultural and historical sites, native American issues, wetlands and flood plains, noxious weeds, and contaminants.
- 10. Review of Nonfederal Land Title.** A formal Solicitor's title opinion is not required at this stage, but BLM should determine that the proponent has or will be able to acquire title to the nonfederal lands, and that this title would be acceptable to the Federal Government. This preliminary title review can usually be completed at the field office. Request Solicitor input when title encumbrances are unclear or may appear to conflict with public land management.
- 11. Manageability of Nonfederal Lands.** BLM must be willing to commit to the funding and staffing for future management. Consider whether a withdrawal or special designation is necessary to protect resource values proposed for acquisition in the exchange.
- 12. Funding and Staffing Availability.** Land exchanges involve a significant workload. BLM must decide if it has enough funding and staffing to process the exchange and if the objectives of the exchange warrant the commitment of staff and funding. This review should also consider if the proponent can provide funding to pay BLM staff or to contract portions of the exchange processing.

**C. Does BLM make a preliminary evaluation of an exchange proposal?**

Following the informal discussion and initial review of the above factors, BLM must determine whether to proceed with the exchange. If the proposal is flawed or proceeding is not in the public interest, provide an explanation to the proponent. If the exchange appears worth pursuing, BLM encourages the proponent to submit a formal proposal.

**D. What should an exchange proposal include?**

The written exchange proposal should include a full legal description of the Federal and nonfederal land. Exchange proposals should identify which parts of the exchange process the nonfederal parties are willing to fund (see Chapter 3). The proponent should provide preliminary title evidence for the lands and/or interests in lands involved, showing all reservations, restrictions, and encumbrances on the nonfederal land. The proponent should also provide legible copies of all reservation or encumbrance documents. BLM should then review the title report and backup documents to determine if items might affect the intended management of the lands and if BLM can acquire clear title. Refer questions concerning the title evidence to the State Office for review and/or transmittal to the Solicitor.

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**E. What does BLM do with the formal proposal?**

Once BLM receives the proposal, it sets up a team to evaluate specific resources and uses the evaluation information to adjust the proposal and complete a feasibility analysis.

**F. Analyzing the Feasibility of Land Exchanges.**

This analysis documents the public interest and the feasibility of completing a proposed land exchange. Illustration 2(a) and 2(b) provides a sample of an approved feasibility analysis.

**1. Content.** Recommended items for inclusion in your analysis:

- a.** Briefly describe the nonfederal and Federal lands, interest in land and the major resources involved. Name which resources or programs will benefit from the exchange.
- b.** Document whether the exchange proposal conforms to the existing land use plans. If existing plans are not adequate, consider a plan amendment. You may combine consideration of a plan amendment with a land exchange proposal. Discuss whether exchanges are addressed in any existing activity plans, such as ecosystem management plans, wild and scenic river management plans, Area of Critical Environmental Concern (ACEC) plans, allotment management plans, habitat management plans, or coordinated resource management plans.
- c.** Discuss future use of the nonfederal lands to help document the need for a withdrawal of the lands if a withdrawal would help BLM in future land management actions. Initiate withdrawal actions simultaneously with your determination to proceed with the exchange. Land acquired through exchange is automatically open to entry under the public land laws 90 days after acceptance of title by the United States.
- d.** List possible conflicts or problems (sensitivity). Include anticipated public support or opposition and local government positions on the exchange.
- e.** Make a preliminary value estimate. Document if the exchange is feasible from a land value standpoint. If possible have staff specialists who are familiar with the area make this estimate. At this time a "formal" estimate of value is not required. Depending on the value issues involved you may want to consult your appraisal staff.
- f.** List estimated cost of processing the exchange. Include expected costs for all levels of the organization, including State Office support staff covering adjudication, appraisal, records noting, and cadastral survey. Consider costs to the government of revoking withdrawals and costs of withdrawing acquired lands if needed. This information can help with future budget efforts.
- g.** Discuss the survey status of the Federal and nonfederal lands and identify survey needs. Costs, timing, and priority of the survey can lower the exchange feasibility and lengthen time frames for completing the exchange.
- h.** Attach a copy of the preliminary title evidence supplied by the proponent.

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- i. Include maps showing Federal and nonfederal lands. At the least, plot this information on BLM surface management maps.
  - j. List encumbrances on the Federal land, using master title plats, mining claim records, and automated record keeping systems. Items of particular concern are rights-of-way, mining claims, leases, withdrawals, and classifications. Please refer to Appendix 3 for BLM policy on removal of encumbrances (IM 97-08).
  - k. Address the need to reserve public access, easements, or other rights on the Federal lands.
2. **Funding Sources.** Determine the proponent's share of the processing costs and the BLM benefitting subactivities that will fund the exchange. Encourage multiple activity funding for exchanges. Include funding from Land and Water Conservation Fund (LWCF) appropriations if the exchange is part of an approved LWCF project or uses LWCF management funds. Encourage maximum funding from the proponent. Only when initiating the exchange itself should BLM consider funding more than 50 percent of total costs.
3. **Estimate time frames for completing the exchange.** You need this information to determine outyear funding needs and to develop the ATI.
4. **Public Interest Determination.** The exchange must be in the public interest as defined by 43 CFR 2200.0-6(b). BLM reviews the above items and documents the initial public interest determination. For an exchange to be feasible it must be in the public interest.

**G. How do you determine whether to proceed with the exchange?**

Following appropriate adjustment of the proposal and completion of your analysis of feasibility, you must determine whether to proceed with the land exchange.

- 1. If you determine that the proposed exchange is not feasible send a written explanation of your determination to interested parties and discontinue further consideration of the land exchange. This is a discretionary action and is not subject to further administrative review (protest or appeal).
- 2. If you determine that the proposal is feasible or can be modified to make it feasible, continue consideration of the land exchange.
  - a. Submit copies of your feasibility analysis to the suitable State Office staff (generally lands and appraisal), so they may anticipate workloads and provide coordination and communication.
  - b. **Priority Determination Criteria.** Review all exchange proposals and include in the AWP on a priority basis consistent with WO budget directives. Field offices should prioritize exchanges entirely within their jurisdictions, and provide a list to the State Director. The State Director determines Statewide exchange priorities and informs the Director through the AWP process.

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**H. Establishing a case file for the exchange, noting the public land records, and segregating the Federal land.**

**1. When does BLM establish a case file for the exchange?**

Establish a case file when you determine that the exchange warrants further study. Depending on local policy, you may establish a case file before your feasibility analysis or after completion and approval of the feasibility analysis.

**2. How does BLM note the public land records?**

Official records must be noted by the method approved by the State Office records manager. Most State record managers note the master title plats (MTPs) and historical index (HI) and the automated records system.

- a. Notations for all public land records must be kept current throughout the land exchange process. Every level of BLM has responsibility for updating records. Updating consists of notations to the master title plats, historical index, and all automated systems (ALMRS). Illustration 3 shows an example record notations request memo. The general BLM policy direction on record notations is found in Appendix 4.
- b. Field staffs are responsible for updating BLM automated systems when they serialize the proposed exchange. All organizational levels are responsible for and expected to record their actions to the automated systems using data standards.
- c. Notation to the records alerts BLM specialists and other users of the pending action and the level of segregation.

**3. When does BLM segregate the Federal lands involved in an exchange?**

BLM segregates Federal lands by noting the official public land records. Segregation is the temporary removal, subject to valid existing rights of Federal lands from appropriation under the public land and mineral laws. A BLM field manager may direct the State Office to segregate Federal lands they propose to exchange. You should segregate Federal lands as early as possible to preclude encumbrances that may later hinder completion of the exchange.

- a. BLM may segregate any Federal lands or interest in land for up to 5 years. The segregation is effective upon record notation.
- b. Segregation doesn't preclude issuance of a right-of-way or other use authorizations. Before issuing any authorization for use of land proposed for land exchange you must consider how it will affect the exchange.
- c. The segregation will end with any of the following occurrences, whichever comes first:
  - i. Issuance of the conveyance document (patent or deed) for the Federal land or interests.
  - ii. The end of the segregation period, not more than 5 years.
  - iii. Publication in the *Federal Register* of an opening order following a decision to remove any or all of the lands from the exchange proposal.

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### CHAPTER 3

#### Chapter 3 Assumption of Costs - Compensation for Costs

BLM and the exchange proponent should agree on the cost sharing aspects of completing the land exchange.

##### A. What is assumption of costs?

Land transactions always involve certain costs. BLM's general policy is for each party to share equally in the costs associated with a land exchange. If two parties are involved, each would pay half the cost. Theoretically BLM pays the costs associated with disposal of Federal lands such as cultural clearances, and mineral reports. Likewise, proponents have expenses such as realty fees and title clearance. At the discretion of BLM any party could assume all costs. In some instances it may be appropriate for BLM to set up a special project account and collect reimbursement for its costs. To avoid a complicated tracking process, BLM generally pays its normal labor cost, and the proponents assume expenses that can be easily contracted, such as appraisals or other reports.

When circumstances dictate that BLM assume costs normally borne by the exchange proponent or the proponent assumes costs normally borne by the government, consider the assumption of costs in your feasibility analysis. The Agreement to Initiate (ATI) an exchange should address distribution of cost between the parties involved. If costs are assumed by one party, the ATI should address them. Any decisions on the assumption of costs may be reconsidered at any time throughout the exchange. If BLM will assume significant costs (more than 65%) the State Director must approve the ATI or amendments to it.

##### B. What is compensation for costs?

The amendments to FLPMA in the Federal Land Exchange Facilitation Act (FLEFA) provide the authority to adjust the relative values involved to pay for expenses incurred in an exchange. Moreover, either party to an exchange may be reimbursed by the other for costs. These costs are restricted to those normally borne by the other party.

##### C. What factors are considered when compensating for costs?

1. In Section 3 of FLEFA Congress declared its intent to allow costs of a land exchange to be paid for by adjusting the relative values of the lands involved.
2. The regulations also define criteria for compensation of costs.
3. Payment is discretionary. The Federal Government is not required to compensate proponents for processing land exchanges even if the Federal Government normally bears those costs. Compensation is a negotiable item to be used **carefully**.
4. Documentation. The Agreement to Initiate an exchange (ATI) or later amendments must document which costs are subject to compensation.

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**D. Is compensation limited?**

Compensation is limited to 25 percent of the value of Federal lands conveyed by exchange. Items borne by each party may vary according to local needs and real estate practices. Refer to Appendix 8 for Department of the Interior guidelines on transactions with nonprofit organizations.

1. Before relative values are adjusted, the differential between Federal and nonfederal land values cannot exceed 25 percent of the value of the Federal lands conveyed.
2. Compensation for costs of the cleanup of contaminated sites cannot be approved unless the acquisition is approved by the Secretary in compliance with Departmental guidelines and the property is cleared of any liability to the United States.

**E. What type of documentation is needed to compensate a proponent?**

1. Compensation should be addressed in the ATI an exchange or later agreements.
2. The acceptability of reports (cultural inventories, appraisals) in meeting Federal standards must be documented.
3. BLM may also issue a decision that lists those costs (meeting the criteria in the regulations) for which BLM will compensate the proponent. The decision should document that the costs are reasonable.
4. Whenever BLM compensates a proponent, the proponent must provide documentation showing that they paid the cost and that the cost is reasonable.
5. All items submitted for compensation **must meet BLM standards**, and the amounts must be prescreened by BLM. For example, a proponent might be required to submit contracts for botanical or archaeological inventories to BLM for advance approval. Reports submitted by the contractor must meet Federal standards. This requirement assures BLM and the proponent that the quality and costs of the work will meet Federal requirements and be acceptable to BLM before the proponent makes payments to contractors.

**F. May an exchange proponent pay BLM's workmonth processing costs?**

The proponent may also contribute funds for Bureau workmonth costs to process all or portions of the exchange. Proponents should reimburse BLM for workmonth costs through a contributed fund account (7122) or a deposit account (5400). BLM should complete tracking and documentation as provided by BLM Manual 1323 procedures.

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**Chapter 4 Nonbinding Agreement to Initiate an Exchange**

**A. When does BLM enter into the nonbinding Agreement to Initiate an exchange?**

When you have completed the initial evaluation and feasibility analysis and decided to continue with the exchange, BLM and the proponent reach a nonbinding Agreement to Initiate (ATI) an exchange. You may prepare a draft ATI for use in the initial evaluation and feasibility analysis. For an example of an ATI see Illustration 4.

**B. What should you include in an Agreement to Initiate an exchange?**

1. The names of the parties to the exchange. A statement of the proponent's qualifications for United States citizenship or Statement of Citizenship. A statement of the agent's authority to represent a corporation, partnership, or trustee. For corporations you will also need a statement that the corporation is incorporated in the State and in good standing.
2. Legal descriptions of the lands, including a description of rights proposed for exchange or reserved (any rights or authorized uses including grants, permits, easements, or leases). You may use a copy of the automated serial register page.
3. A statement that proponents are required to provide preliminary title evidence at their own expense and at a later date, a title insurance policy. The proponent must show that they have title to the nonfederal lands or have control of the title through an option or other means.
4. A list of responsibilities for each party. The agreement should also include a time schedule and a cost estimate for each step, such as clearances, studies, and appraisals.
5. If BLM is to assume costs, or if BLM or the proponent will compensate the other for processing costs, you must include a statement of how the assumption of or compensation for costs will serve the public interest. Although you should address costs at this stage, assumption or compensation for costs may be considered at any time during processing of the exchange, even at closing of the final transaction. (For further discussion of assumption of costs, see Chapter 3.)
6. A requirement to disclose any known release, storage, or disposal of contaminants on the land involved in the exchange.
7. Grant of permission by each party to the other (including authorized representatives, employees, contractors, etc.) to examine the lands involved in the exchange.
8. Assembled land exchange agreement language, including the ability of the proponent to have the nonfederal lands conveyed directly from the landowner to BLM and of BLM to convey Federal lands directly to a third party.

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- 9. An agreement on appraisal procedures, which must:**
- a.** Require an appraisal within 90 days of the ATI unless agreed otherwise.
  - b.** Name the party(s) responsible for completing and paying for the appraisal. If the non-federal party(s) are providing monies to pay for the appraisal it is advisable to establish a reimbursable or contributed funds account. The BLM would contract for the appraisal and use funds deposited into the account for payment. Regardless of who pays for the appraisal it must be available to the public during review of the land exchange decision.
  - c.** State whether you will treat multiple parcels and ownerships individually or in combination.
  - d.** Include full disclosure of purchase prices and any agreements to sell newly acquired Federal lands.
  - e.** Commit to locking in values once you have an approved appraisal. You should lock in values for a fixed rather than indefinite period. Determine how values will be adjusted in those instances when the lock in period expires.
  - f.** Consider suspending or changing deadlines for agreeing on appraised values.
- 10.** The method of closing (simultaneous closing and/or use of escrow) and how the conveyance documents will be delivered.
- 11.** Require notice to an owner or occupant of the voluntary basis of the acquisition. Cover relocation of any tenants and the method of compensating for relocation expenses.
- 12.** A statement that the ATI may be amended by mutual consent of the parties or terminated at any time upon written notice of any party.
- 13.** A statement that entering into an ATI does not legally bind any party to proceed with or consummate an exchange or to pay damages to any party and that BLM's withdrawal from an exchange proposal is not protestable or appealable at any time before the Notice of Decision (NOD) is issued.

## **H-2200-1 LAND EXCHANGE HANDBOOK CHAPTER 5**

### **PHASE II: DOCUMENTATION**

#### **Chapter 5 Notice of Exchange Proposal**

##### **A. Does BLM have to publish a Notice of Exchange Proposal?**

BLM must publish a Notice of Exchange Proposal (NOEP) upon entering into an ATI. The purpose of the NOEP is to inform the public of the proposal and suitability of the Federal lands for exchange. See Illustration 5 for a sample notice.

##### **1. Where do you publish your notice?**

The notice must be published in a newspaper of general circulation in all counties in which affected lands are located. If portions of the Federal and nonfederal lands are located in different counties, the NOEP may have to be published in more than one newspaper. Newspapers may offer cost-saving methods for publishing notices: lower costs for certain newspaper sections or days of the week or for submitting material via e-mail or on computer disk. You may want to write a letter to the editor or otherwise encourage local newspapers to do a story on the exchange. Work with your public affairs staff to identify appropriate outreach methods to meet your specific needs.

##### **2. How often must you publish the NOEP?**

The NOEP must be published once a week for 4 consecutive weeks. The authorized officer must proofread the first publication to check for errors. Only major errors in legal descriptions or other information will require publication of a corrective NOEP.

##### **3. What information must a NOEP include?**

- a.** A brief description of the purpose of the exchange and the benefits to the public. You may include the serial number.
- b.** All parties involved in the proposed exchange. If two or more proposals have been received, all proponents must be named.
- c.** Clearly written descriptions of the lands and interests in lands involved. For exchanges involving long or complicated land descriptions, the meridian, township, range, section, and a locally recognized geographic location may be referenced. It may be helpful to label parcels of land with a name or number to let the public comment on a specific parcel by reference number rather than by legal description.
- d.** The date and effect of the segregation.
- e.** An invitation to the public to submit written comments, preferably on specific parcels and the date when comments must be received.
- f.** The address where comments should be submitted and where the public can obtain more information about the exchange.

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**B. What does BLM do with the comments received?**

Substantive comments that are postmarked or delivered within 45 days after the date of the initial publication of the NOEP should be analyzed in the required reports and considered in the exchange processing. **The NOEP is not a decision, so it is not appealable or protestable.**

**C. To whom must BLM send copies of the NOEP?**

1. All authorized users of the land involved in the exchange must receive a copy of the NOEP. The NOEP will inform the public of the possible change in ownership of the Federal land and give the public an opportunity to comment.
  - a. The NOEP may serve as the 2-year grazing notification to authorized grazing permittees in compliance with the grazing regulations. See Illustration 5 (b).
  - b. The NOEP will notify right-of-way holders of the possible change in ownership of the Federal land and give them the chance to convert the right-of-way to an easement from the proposed new landowner.
2. The Governor and/or State clearinghouse, at least 60 days before the final decision on the exchange.
3. The local government bodies having planning and zoning jurisdiction over the lands.
4. The U.S. congressional delegation representing the involved lands.
5. Any other interested parties of record, including Native American government-to-government consultation.
6. You may also send the NOEP to the Resource Advisory Council (RAC) or other advisory board, local municipal governments, and adjoining land owners.

**D. When must you republish or correct a NOEP?**

1. You must publish another NOEP if more Federal or nonfederal lands not previously named in a published NOEP are to be included in the exchange.
2. Minor corrections of land descriptions do not require republication. Only major errors in legal descriptions or other information will require publication of a corrective NOEP.
3. You are not required to republish a NOEP when you delete lands from an exchange proposal or when completion of the exchange is delayed for an extended period. However, neither are you prohibited from republishing if it is appropriate for you to do so.

**E. Can a NOEP be combined with a notice of plan amendment?**

The BLM can amend a land use plan at the same time that an exchange is processed. You may combine notices, environmental documentation and other procedural steps consistent with the planning regulations and other guidance.

## **H-2200-1 LAND EXCHANGE HANDBOOK CHAPTER 6**

### **Chapter 6 Resource Analysis and Environmental Documentation**

#### **A. Resource Analysis - An Opportunity for Streamlining.**

The information gathering, analysis, and preparation of the NEPA document can be streamlined significantly if all members of the interdisciplinary (ID) team pool their resources and coordinate their efforts. Traditionally each ID team member functioned as a separate entity, conducting field inventories and writing reports that were eventually handed off for consolidation into the final NEPA document. But if all specialists coordinate closely before beginning their inventory work, they can function as "extra eyes and ears" for each other. Each specialist should observe the lands from a team viewpoint rather than from the viewpoint of a particular specialty. For example, the archaeologist, mineral specialist, and biologist should be aware of and watching for signs that might reveal contamination or evidence of storage or release of contaminants, noting on a map and relaying the information to the appropriate specialist for further investigation. The mineral specialist should be looking at the land not only for minerals but also for surface and subsurface pathways that could allow contamination to spread or show that the land is on a flood plain. When the report for potential contaminants is written, it should reference the mineral report, or vice versa, to avoid duplicating information. As the final NEPA document is written, it should briefly summarize and refer to the information in the supporting reports (minerals, contaminants, etc.).

#### **B. What specific reports are required for land exchanges?**

Exchange processing begins with collecting data and preparing specific reports. To speed this processing, actions should go on simultaneously wherever possible. Some reports require other information before they can be completed and may greatly benefit from coordinated processing. Appraisals, for example, may need information from mineral reports. All resource specialists should evaluate existing inventories, NEPA documents, etc., before ordering new reports or scheduling new field examinations. BLM requires the following reports :

##### **1. How is the mineral potential report used to assess land exchanges?**

This report determines if the Federal and nonfederal lands have mineral potential. It evaluates surface use interference with potential development of the mineral estate and recommends to management what action should be taken toward disposal or retention of the Federal mineral estate. Your report should answer questions generated by the site-specific conditions of the lands involved in an exchange proposal and should contain a level of detail consistent with the resources involved. Working closely with the realty and appraisal staff, the mineral specialist prepares the mineral report using guidance in BLM Manuals 3031 and 3060. A mineral report may not be required for nonfederal land if the landowner waives any potential mineral values or there is no reservation of the mineral estate that would affect surface management by the Federal Government. If a mineralized parcel is part of the nonfederal land, BLM must gather the information to determine if the land can be managed in the future. Exchanges involving only the mineral estate require reports on both the Federal and nonfederal lands.

- a.** Information from the mineral report is essential for requesting and developing the appraisal. The mineral specialist and appraiser should work closely to ensure that BLM receives equal value for the surface and mineral estate, as required by FLPMA. Guidance for mineral appraisals is found in BLM Manual Sections 3031, 3060, 3070, and 3620.

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- b.** You may summarize and incorporate Information from the mineral report into the environmental document by reference. The mineral specialist should write recommendations in the mineral report to address the needs of the many specialists and decision makers working on the exchange.
- c.** Mineral potential reports may be prepared by qualified BLM mineral specialists, qualified mineral specialists from other agencies, or qualified private (third party) mineral specialists. If third-party contractors are to be used, the BLM should select them using its internal legal procedures and standards for contracting. Managers should carefully weigh both the benefits and risks of using non-BLM specialists for preparing mineral reports. To avoid the potential for screening information by the proponent, information collected should be given directly to BLM rather than to the proponent. Geologic and financial information must be held strictly confidential in accordance with regulations. The level of detail in the mineral report should be suitable for the potential values and complexity of the minerals involved. BLM must review and approve reports prepared by non-BLM mineral specialists, including those from other Federal agencies.
- d.** A mineral specialist reviews mining claim records. If claims were not properly located or assessment filings have lapsed, the State Office should issue a null and void or abandoned and void decision. Federal lands with properly filed and maintained mining claims generally are not exchanged unless the mining claims are relinquished before the exchange is completed. Under current practice the BLM considers the exchange of lands encumbered by mining claims on a case by case basis. BLM sometimes makes an exception when claim validity is highly questionable due to a lack of discovery or other fatal flaw and the exchange is in the national public interest. When BLM field managers decide to go forward with a land exchange involving mining claims:

  - i.** You must notify the proponent and claimant (if different from the proponent) of the concerns and issues regarding claims. The prospective patentee must be willing to accept title subject to valid existing rights (mining claims).
  - ii.** You should consider the viability of formally challenging third-party claims as part of the early analysis of the exchange proposal.
  - iii.** You must coordinate any legal issues with your Regional or Field Solicitor.



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**2. Is a contaminant report required?**

You must inventory contaminants and prepare reports for both Federal and nonfederal lands and incorporate into the environmental process. The reports disclose if any contaminants occur on the lands, estimate the potential costs for cleanup, and determine potential liability to the parties of the exchange. These reports establish baseline information in the event of future actions regarding BLM liability. Information from the reports may lead to a Bureau decision to abandon the exchange.

- a. The Department adopted the American Society for Testing Materials (ASTM) standards for environmental site assessments (ESAs), formerly referred to as Level 1 surveys. (See the guidance in 602 Departmental Manual 2 and BLM guidance provided by your State Office hazardous material coordinator.) The level of analysis and documentation will depend on what the initial inspection discovers, past land uses, and the closeness of known contaminated sites. The intensity of field survey may vary from flight survey to physical inspection. Unless contamination is suspected, any qualified resource specialist visiting the lands must complete the initial inspection. Consult with your hazardous material coordinator if you suspect any contamination on nonfederal lands.
- b. BLM is responsible for securing contaminant surveys on the Federal lands. Phase I surveys may be supplemented with information from private contractors. Reports on nonfederal lands should be updated when the Certificate of Inspection and Possession is completed if more than 6 months have elapsed since the first inspection.
- c. The administrative record for the Federal lands must reflect the BLM inventory for known release or storage of contaminants on those lands.
- d. The presence of contaminants on the lands may affect land values. Your appraisal request should include information concerning any known or suspected contaminants. It may be necessary to cleanup or remove contaminants before completing the exchange. The proponent is generally responsible for the costs of remedial actions on nonfederal lands.

**3. What are the historic preservation report requirements?**

The regulations implementing Section 106 of the National Historic Preservation Act of 1966 (36 CFR 800) require Federal agencies to consider the effects of Federal actions on sites eligible for the National Register of Historic Places and to consult with the State Historic Preservation Officer (SHPO).

- a. Cultural and historic resource inventories. BLM consults with the SHPO to determine inventory needs and methods. To assess the effects of transferring the land out of Federal ownership, you may need to conduct a resource identification. Existing data inventories and/or sampling field inventories of both the Federal and nonfederal land may show that losses and gains would balance, or that the Federal Government would benefit by bringing high value historic resources under Federal jurisdiction.

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- b.** Historic resource mitigation. BLM should consider mitigation when high value historic properties, eligible for or included in the National Register, would leave Federal jurisdiction, and it is not feasible to retain that portion of the parcel in Federal ownership. Determine mitigation needs and methods in consultation with the SHPO. When historic properties of like or comparable preservation value are coming under Federal ownership, this might be adequate compensation, reducing or eliminating the need for extensive mitigation.

**4. Does BLM have any Native American coordination and consultation requirements?**

Before making a decision regarding a land exchange BLM must determine the affect on Native American interest, observe consultation requirements and document how this was done. The BLM uses its consultation record as the basis for demonstrating that we made a reasonable and good faith effort to obtain and consider appropriate Native American input. Refer to BLM Handbook H 8160-1 for procedural guidance on Native American consultation and coordination.

**5. Are wildlife and botanical surveys required for land exchanges?**

In addition to routine wildlife and vegetation species inventories required by NEPA, threatened and endangered species must be surveyed. Section 7 of the Endangered Species Act requires consultation with the U.S. Fish and Wildlife Service if the exchange may affect a listed species or habitat. If there is any question, informal consultation should begin immediately. Formal consultation may take up to 90 days, after which the Service will issue a biological opinion. The terms and conditions of the biological opinion can be incorporated into the exchange process, which may include reservations in any conveyance documents issued by the Federal Government. Both Federal and nonfederal lands may be inventoried to allow the analysis of all beneficial and adverse impacts of an exchange.

**C. What NEPA compliance requirements does BLM have for land exchanges?**

BLM Manual 1790, BLM Handbook H-1790-1 and supplemental instruction memoranda provide guidance on NEPA compliance requirements. The environmental document describes the impacts of completing the land exchange, on the resources affected. All reasonably foreseeable impacts of the exchange must be considered. Bureau employees or private consultants (with review by BLM) may prepare environmental documents.

1. Generally, the proposed action is the exchange of lands. The description of the proposed action must also include the likely future use of both the Federal and nonfederal land. For the nonfederal lands this could include actions such as withdrawal, development of recreation facilities or resource conservation activities. If a proposed land exchange requires a plan amendment, the environmental document should address both the plan amendment and the exchange. Refer to the planning regulations and other guidance for information on amendment of a resource management plan.
2. The NEPA document should be prepared at or tiered to the highest level of planning possible. NEPA analysis conducted during resource management planning, activity planning or acquisition project planning may reduce the need for separate environmental documents for individual exchanges. Whenever possible, programmatic environmental documents should be prepared to address the disposal of multiple parcels in exchange for lands in acquisition project areas.

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3. The NEPA document must address the future intended development of Federal lands facilitated by the exchange. Unless the proponent has specific development plans, address future development only in general terms, with a consideration of direct impacts to the Federal lands. You must address the "reasonably foreseeable development scenario."
4. Where you receive two exchange proposals for the same Federal lands, consider the public interests served by each proposal in the environmental document. This consideration will allow BLM to determine the proposal with the greatest public interest.
5. All affected resources should be considered, including cultural values, recreation opportunities, wildlife, botanical resources, and minerals. Since both a disposal and acquisition action are being evaluated, the following areas need to be addressed:
  - a. Analysis of the social and economic impacts of the exchange, including loss or gain to the tax base, payment in lieu of taxes, tourism, and livestock head tax.
  - b. Land status and all valid existing rights, uses, and facilities on both Federal and nonfederal lands.
  - c. Status of authorized grazing and range improvements. The permittee or lessee owning range improvements on Federal lands may be entitled to compensation for the lowered range improvement value. If disposing of the land will require reducing grazing preference, the permittee is entitled to a 2-year notice before any portion of the permit or lease may be canceled. A NOEP or letter similar to that shown in Appendix 3 may serve as the official 2-year notification. If the permittee agrees in writing to waive grazing privileges, the disposal may proceed. If the permittee is unwilling to waive grazing privileges, the patent may be issued subject to the lease or permit for the 2-year notification period, if needed. (Note appraisal implications of delayed possession.) Formal guidance is in 43 CFR 4110.4-2(b) and the 2-year notification should be coordinated with the range specialist.
  - d. All authorized and unauthorized uses on the lands involved in an exchange should be addressed. The proper disposition of rights-of-way, leases, permits, mineral authorizations, trespass (unauthorized use), etc. should be determined. Users holding Federal authorizations should be encouraged to obtain private agreements (i.e., easements) with the prospective landowner before Federal lands are transferred to reduce the number of "subject to" notations listed in the patent.
  - e. The need to reserve public access, easements, or other rights on the Federal lands.
  - f. Executive Order 11988 requires that conveyances of Federal lands within a flood plain must be subject to local land use restrictions. Consult your mineral specialist, hydrologist, or other earth scientist for help in determining if the lands are located in flood plains. In addition, the Federal Emergency Management Agency (FEMA) prepares flood insurance rate maps which may be used to determine if the Federal lands lie within flood plains. Refer to BLM 1860 Handbook for appropriate flood plain restrictions to include in patent documents.

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## **H-2200-1 LAND EXCHANGE HANDBOOK CHAPTER 7**

### **Chapter 7 Appraisals**

Land exchanges are voluntary transactions completed on an equal value basis. Parties to these transactions must agree to the relative values of the lands involved. Unless the parties mutually agree to use some other process, the market value of the lands being exchanged are estimated by appraisal. Parties may mutually agree to use competitive bidding or retention of a mineral royalty to help establish value for the Federal lands or interest. In the event of disagreement concerning the appraised value, the parties to the transaction may agree to use arbitration, bargaining or some other process to reach agreement. Refer to Chapter 8 for information on use of these Federal Land Exchange Facilitation Act (FLEFA) alternatives.

#### **A. How do you request an appraisal?**

To request an estimate of value, submit an appraisal request to the Lead State Appraiser. Use Form 9300-8—Appraisal Request—or a similar form acceptable to the users. Electronic versions are also available.

If potentially valuable mineral or timber interests are involved, mineral or timber expertise may be needed. Responsibility for such cases should be discussed early in the process and determined in conjunction with the resource and appraisal staffs. Early and continuous coordination with these staffs will help sound appraisals be completed on time. See Manual Section 9310.5.

An appraisal request is a work order authorizing the expenditure of time, effort, and funds. Therefore, the work requested should relate to an exchange approved for further processing. Generally, the more lead time the Lead State Appraiser has to arrange the work, the more likely the appraisal will be completed at the optimum time. An optimally timed appraisal may eliminate the need for a reappraisal or update. All requests for appraisals require the following information:

1. Due date: Coordinate with the Lead State Appraiser.
2. Case file number.
3. Name, address, and telephone number of the non-federal property owner or land exchange proponent.
4. Legal Description: Include a precise legal description of the property. In some rare cases appraisals can be started with a tentative description. But if at all possible, the request should include the legal description by which the property will be conveyed.
5. Type of Appraisal. The type of appraisal report needed should be determined in consultation with the appraisal staff. Consider the complexity of the assignment, the probable value range, required standards, and the cost and time involved in producing the report.
6. Property Rights to be Appraised. Clearly state what estate or rights you want to be considered, e.g., fee simple, surface estate, mineral estate, water rights, reservations, benefitting or encumbering easements, fixtures, personal property. Describe any unusual or burdensome terms, conditions, or stipulations that exist or may later be imposed on the exchange. Appraisals should consider the value of all rights and interests being conveyed, including mineral and timber interests.

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#### 7. Other Information

- a. Existing or pending title (preliminary) reports, mineral reports, and hazardous material clearances or surveys (attached or referenced).
- b. A preliminary determination of mineral potential as required by Manual Section 9310.51B. Appraisers and mineral specialists will work in concert to address minerals.
- c. Information on the presence of contaminants. While many appraisers have hazardous materials training and may observe and report potentially hazardous conditions, they are not the final authority on such matters.
- d. Information on any recent transactions or other market information involving properties to be appraised, e.g., sales, listings, leases, options-to-sell, easements, and exchange agreements.
- e. Field Contact. Name of BLM employee the appraiser should call to gain information or report problems.

The appraiser must contact the owner for an inspection of nonfederal property but should not be the first BLM contact with a landowner or occupant. Be certain that land owners and occupants are aware that appraisals are underway and that they may be contacted, especially when exchanges are arranged through third parties under option agreements.

#### B. What is an appraisal report?

The appraisal or appraisal report is a document independently and impartially prepared by a qualified appraiser. The report describes the work and sets forth the information and analysis supporting the appraiser's estimate of market value for the lands or interest in lands involved in the exchange. The BLM policy (43 CFR 2201.0-6) requires completion of exchanges on an equal value basis. Different laws use the terms fair market value or market value. The BLM land exchange regulations use only the term market value. The appraisers recommendations concerning market value help BLM managers determine when the value of lands or interest in land involved in the exchange are equal.

#### C. What types of appraisals can you request?

Several types of appraisal products can be ordered, requiring different levels of research and documentation and providing corresponding levels of cost, time, risks, and reliability. The specialist should discuss with an appraisal representative which product is suitable. BLM must review and approve all valuations before use in the exchange process.

1. Preliminary Estimate. A preliminary estimate is a short oral or written report estimating a value or a range of values for properties. Specialists and managers may find these consultative services useful in the early stages of an exchange (initial evaluation of the exchange) so that time and effort are not spent on cases where the land values are out of balance or price expectations are not supportable. Because preliminary estimates are brief they should be used for internal purposes only. To avoid creating unsupported expectations, preliminary estimates are usually not exposed to a broad audience.

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Staff appraisers experienced in a particular market area can readily prepare preliminary estimates. But if the property is unique or the appraiser has little recent market information relevant to the property, the appraiser may have to gather and verify recent transactions in the area before estimating value (or a range of value).

2. Statements of Value. Prepared by a qualified appraiser, a statement of value is a written report that states and supports the appraiser's conclusion that the value of the Federal lands involved in an exchange do not exceed \$150,000. This product is used only for processing an approximately equal value exchange. A statement of value prepared by a BLM staff appraiser may be submitted to the requesting manager without further review or approval.
3. Area-Wide Appraisal. Also known as a project appraisal or mass appraisal, an area-wide appraisal can be used to estimate value (or ranges of value) for a group of parcels that have many similar characteristics.
4. Complete Appraisal. A complete appraisal is a fully researched and documented analysis of all applicable approaches to value. This type of appraisal is discussed in the exchange regulations (see 2201.3-3) except in situations where preliminary estimates or statements of value apply. A complete appraisal may be presented in either a summary or self-contained report format. The difference between the two is not the extent or type of research and analysis undertaken; rather, it is the level of detail presented. Generally, the more complex the appraisal problem or the more controversial or sensitive the exchange, the more detailed the appraisal report should be. The goal is to address the report to the users so they may best understand how the appraiser arrived at the conclusion.

#### D. Do appraisal reports have to comply with standards?

Appraisal reports must comply with BLM regulations. Appraisers are also guided by the Uniform Appraisal Standards for Federal Land Acquisition published by the Department of Justice, and the Uniform Standards of Professional Appraisal Practice. State certified or licensed appraisers must also comply with State requirements. By accepting an assignment, the appraiser assumes the responsibility of reconciling the requirements of that assignment with standards that apply.

#### E. What is an appraisal review?

A qualified review appraiser reviews the appraisal to ensure that it is logical, consistent and meets Agency standards. The reviewer may be a BLM staff appraiser, a qualified reviewer from another Federal Agency, or a contract review appraiser. An appraisal review is not another appraisal. It is an examination of the information, reasoning, and analysis the appraiser used to estimate value. If found acceptable, the appraisal is approved and recommended for BLM use. If reviewers find problems with an appraisal, they work with the appraiser to obtain an acceptable appraisal report. The values approved by the review appraiser, as documented in a review statement, serve as the basis for reaching an agreed upon value for the exchange.

The decision to accept the review or approve the appraised value is a BLM decision that cannot be delegated outside the agency. All appraisals used in land exchanges must be administratively accepted by a BLM Lead State Appraiser or an officially designated Bureau Appraiser before transmittal to the State Director or authorized officer.

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### **CHAPTER 7**

A qualified staff review appraiser must perform an administrative review of a contract review appraiser's report. The administrative reviewer must explain the scope of the review assignment and disclose that their review is limited to an evaluation of the appraisal processes performed by the appraiser and does not entail a detailed technical review of the appraisal report. The written administrative review report must describe the evaluation process performed, and include an opinion as to the reasonableness of the reviewer's conclusion of value and concur in the reviewer's recommendation.

#### **F. Who has management responsibility for the appraisal function?**

State Directors are responsible for administration of the appraisal function consistent with applicable laws and policies. Responsibility for day to day operation is usually assigned to the Lead State Appraiser.

#### **G. What is the appraiser's role in the exchange process?**

The review and staff appraiser advise the State Director or authorized officer on market value. Throughout the process, the appraiser's role is to facilitate sound decisions by the authorized officer.

#### **H. What is the shelf life of the approved market value estimate?**

Local real estate market conditions determine an appraisal shelf life. Different markets change at different rates, and not all appraisals have the same shelf life. Customarily, approved values are valid for 6 months, but this period may be longer. Check with your Lead State Appraiser.

Appraisal updates should be requested as the appraisal approaches the end of its shelf life or if significant local events warrant a re-examination. Examples of such events include zoning changes, known sale of nearby property, announcement of plans in the area for major projects, or changes in the availability of utilities or water.

Once values are agreed upon, they may be stipulated in the exchange agreement. In the absence of significant local events or physical changes in the property, locking values make further appraisal updates unnecessary. (See Chapter 4, Agreement to Initiate.)

#### **I. Are appraisals public information?**

Appraisal and other valuation information must be available for public review upon publication of the Notice of Decision (NOD). This information is available for review during the protest period so that interested members of the public may fully review and comment on BLM's decision. Review reports and appraisal reports are available to the public unless they contain proprietary or confidential information. Those parts of these reports that do not contain proprietary or confidential information are releasable under the Freedom of Information Act (FOIA). If you receive a FOIA request for appraisal reports that contain proprietary or confidential information, contact your FOIA specialist and refer to BLM Manual 1278 for additional guidance on handling the request.



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**Chapter 8 Bargaining, Arbitration, and Other Processes to Resolve Value Disputes.**

**A. When can BLM use bargaining, other processes, or arbitration?**

In enacting the Federal Land Exchange Facilitation Act (FLEFA), Congress gave BLM new ways to fairly and in a timely manner resolve disputes over the values of lands involved in the exchange. After BLM receives an appraisal, if the values of the land involved are in dispute, the parties involved may agree to initiate a process to resolve the dispute. Several resolution methods are available. They include: bargaining, other processes, and arbitration. Remember, before using any of these methods, you must have a BLM approved appraisal report and the parties to the exchange must agree to use the process to determine the value of the properties involved in the land exchange.

**B. What is bargaining?**

Bargaining is a process of resolving disagreements between parties over approved appraised values. Bargaining is based on an objective analysis of the valuation in the appraisal reports. You may use a variety of dispute resolution techniques. These include obtaining a second review of the initial appraisal, obtaining an additional appraisal, using an impartial third party to resolve the dispute, or use of some other acceptable and commonly recognized practice for resolving value disputes such as negotiations.

Any agreement resulting from your bargaining efforts must be in writing and made part of the administrative record for the exchange. The agreement must explain how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

**C. What are some examples of "other processes" to resolve value disputes and when may BLM use them?**

The "other methods" of resolving value disputes referred to in FLEFA includes alternative dispute resolution (ADR) processes. No clear rules determine which method is best in a given situation. Resolution processes may include conciliation, cooperative problem-solving, resolution teams, dispute panels, fact finding, mediation, mini-trials, or direct negotiations. For more information contact staff members or contractors familiar with dispute resolution techniques.

You may also use other processes of valuation (43 CFR 2201.1 d) when appraisal information is so lacking that a reliable appraisal is not possible or when properties to be valued are so unusual or the market so stagnant that there are no "comparables". Without relevant market data or information from other sources, the reliability of an appraisal may be so low that we must use another process to estimate the value of the property. For example BLM may use a competitive bidding process or retain a mineral royalty to determine the value of Federal lands or interest in land.

The BLM and other parties involved in the land exchange may mutually agree to a process of bargaining or some other process to determine value. These "other processes" referred to in FLEFA include discussion of factors or elements that are outside the normal appraisal process. These factors may include consideration of public benefits that result from the transaction. Criteria for such a discussion may include:

1. Delaying a decision would result in more costs or unacceptable risks.

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2. Imminent destruction of the property for the governments intended use is reasonably likely.
3. Economic benefits of government ownership would exceed the higher costs.
4. Results of a qualified dispute resolution process support a price different from the appraised value.

The parties involved in the exchange must agree upon the methods used to resolve disagreements in value. Ultimately, the authorized manager must determine whether values established using these other processes are equal.

**D. What is arbitration?**

Arbitration involves submitting the valuation disagreement to a disinterested third party for resolution. Rules governing the process are those adopted by the American Arbitration Association.

Bargaining and other processes should be considered before arbitration is used; arbitration is a tool that should be used only when other methods do not work.

The arbitrator's award decision is limited to the disputed value of the lands involved in the exchange. An award decision must not include recommendations on the terms of a proposed exchange. Nor should an award infringe upon the Secretary's authority to make all decisions on managing the Federal lands. As a precaution, arbitration is mandatory if the exchange agreement does not provide for resolving disagreements in value. In this event, the law contains specific time tables for resolving the value dispute. See Section 3 of the Federal Land Exchange Facilitation Act.

Arbitration may also be useful when disagreements between parties are significant and other methods are not likely to be successful.

**E. Is arbitration binding on the parties?**

No. But within 30 days after completion of arbitration the parties involved in the exchange must determine whether to proceed with the exchange. The parties may accept the decision or withdraw from the exchange. Either party may decide to withdraw by submitting a written notice. If the parties agree to proceed with the exchange after arbitration, the values are binding upon them for no more than 2 years from the date of the arbitration decision.

**F. What is the role of the appraiser in arbitration, bargaining or other processes?**

Appraisers and review appraisers may play a variety of roles. Their expertise is essential in evaluating valuation issues. Depending on circumstances, they may serve on the bargaining team or act as advisors. Before initiating any of these processes you should discuss the specific issues involved with the Chief State Appraiser.

**G. Are there any documentation requirements?**

The approved appraisal is the initial documentation required for the exchange valuation determination. The Agreement to Initiate an exchange (ATI) must address how valuation

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disputes will be handled. Bargaining or other processes should be the first alternatives used. Any agreement reached by the parties must be in writing and made a part of the exchange's administrative record. The agreement must reference pertinent appraisal information and explain the rationale and conclusions that support the agreed-upon value. Any appraisals presented during the bargaining process must be open to review by a qualified appraiser representing the agency with responsibility for appraisal review.

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**Chapter 9 Notice of Decision, Protests, and Appeals**

**A. When does BLM issue the decision document for land exchanges?**

BLM must complete the NEPA analysis, appraisal and other documentation requirements before making a decision on whether to proceed with a land exchange. Guidance for preparing decision documents (decision record or record of decision) can be found in BLM Manual 1790, Handbook H-1790-1, and instruction memoranda. Decision documents for land exchanges should incorporate the following items:

1. A statement, including rationale, that the exchange is in the public interest. Refer to 43 CFR 2200.0-6(b).
2. A complete description of the lands and interests in lands to be exchanged and all conditions of the exchange. All mineral reservations should be listed, along with other rights that will be reserved. Rights that the conveyance document will be issued "subject to" should be listed separately.
3. If the NEPA document is programmatic, a complete list of all actions or conditions that must occur or exist before an exchange can be completed.
4. Do not include appeals language in the decision document. Until BLM issues a final decision on any protest we receive the decision document is not ripe for appeal. Refer to the following discussion of the protest and appeals process for land exchanges.

**B. Does BLM have to publish a Notice of Decision?**

After completing the NEPA analysis, appraisal, decision and other documentation requirements BLM must issue and publish a Notice of Decision (NOD). The NOD informs the public whether BLM will proceed with the exchange. The administrative record must show that the exchange is in the public interest and in compliance with law and regulations. A sample NOD is presented in Illustration 6 (a).

**C. Where do you publish your NOD?**

The NOD is published one time in a local newspaper meeting the same requirements as described for the NOEP. (See Chapter 5.)

**D. What information must a NOD include?**

1. Date of the land exchange decision.
2. A concise description of the decision, including a clear statement of approval, modification, or disapproval and a brief summary of the rationale for the decision. See 43 CFR 2200.0-6 (b).
3. Directions for obtaining a copy of the decision or other information regarding the exchange.
4. The names of the exchange parties.
5. The name and title of the deciding official.

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6. The date of the beginning of the protest period. The protest period begins the day after publication of the NOD in the newspaper and runs for 45 days.
7. Optional additional content. The authorized officer may also include the following items:
  - a. Serial number and general description of the lands involved.
  - b. Statement requiring comments to be specific to a parcel or address a specific concern regarding the decision.
  - c. A reference to the previously published NOEP.
  - d. A statement of value for the exchange.
  - e. Information explaining use of a Ledger Account Balance system.

**E. To whom must BLM send copies of the NOD?**

You may send copies of the NOD to anyone interested in the decision. This includes adjacent landowners, Resource Advisory Council (RAC) or other advisory boards, municipal governments that are potentially affected by the exchange proposal and others as appropriate. You must send the notice to the following parties:

1. Authorized users of the affected Federal lands.
2. Governor and/or the State Clearinghouse (at least 60 days before the Federal conveyance documents are issued). The 60-day period runs concurrently with the 45-day public review period. The 60-day period is not required if the lands are the same as described in the NOEP.
3. The governing body of any political subdivision having zoning or other land use regulatory authority over the geographical area of the Federal lands.
4. The congressional delegation representing the lands to be exchanged.
5. The nonfederal exchange parties.
6. Anyone who has requested notification of the exchange or filed written comments on or objections to the proposal.

**F. Can BLM combine a NOD with a notice of availability for a Record of Decision or a notice of plan amendment?**

Notices can be combined and processing can proceed consistent with the regulations. The Council of Environmental Quality regulations, BLM planning regulations and Departmental manual all encourage the use of a combined notice. The comment period for a plan amendment is found in 43 CFR 1610.2. Refer to Illustration 6 (b) for an example of a combined notice involving a plan amendment.

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**G. How long is the protest period?**

A protest period is available for 45 days after the date on which you published the NOD. The Protests are filed with the Field Manager issuing the decision, who will analyze them, and forward a draft response to the State Director.

**H. What is the appeal process?**

The State Director's written decision in response to a protest is appealable to the Interior Board of Land Appeals (IBLA) in accordance with 43 CFR 4.410. If an appeal is filed and IBLA grants a stay, the effect of the decision is suspended until IBLA rules on the appeal. If IBLA does not grant a stay within the 45 days provided by the 43 CFR 4.21, the decision may be implemented at the authorized officer's discretion.

The BLM may request that the Assistant Secretary of Interior assume jurisdiction over an exchange and sign the decision in response to a protest. When the Assistant Secretary of Interior signs the decision any challenges are filed in Federal Court. Refer to Appendix 9 for information on Assistant Secretary dismissal of protests.

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**PHASE III: TITLE TRANSFER**

**Chapter 10 Binding Exchange Agreement**

**A. When should you use a binding exchange agreement?**

After BLM publishes the Notice of Decision (NOD), the parties may enter into a binding agreement. See Illustration 7. The binding agreement is optional unless contaminants are present on the nonfederal lands, in which case the regulations require a binding agreement. Other reasons to use a binding exchange agreement include fixing the agreed-upon land values or to protect significant investments of time and money made by either party in the exchange process.

When executed, the binding exchange agreement will legally commit the proponent and BLM to complete the exchange or to reimburse the other party for all costs incurred while processing the remainder of the exchange. Before being executed, all binding exchange agreements must be approved by the State Director after consultation with the Regional Solicitor.

**B. What must you include in the agreement?**

The binding exchange agreement will include at a minimum the following:

1. Names of the parties to the exchange.
2. Legal descriptions of the lands to be exchanged.
3. Description of rights to be exchanged and any rights to be reserved or made "subject to" (authorized uses, including grants, permits, easements, or leases) on the Federal or nonfederal lands.
4. Method of balancing any assembled land exchange agreements.
5. Method of payment or waiver of cash equalization payments consistent with regulations.
6. A statement fixing agreed-upon values.
7. A statement establishing responsibility for any contaminant removal, indemnification, or other remedial action.
8. Method of closing. If you plan to use simultaneous closing procedures, include the escrow instructions or attach them to the agreement.
9. Conditions that must be met for the agreement to be legally binding (escape clause). (See paragraph C. below.)
10. Consequences of failure to perform by either party.

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**C. What makes the agreement legally binding?**

An exchange agreement is legally binding on both parties if the following conditions are met:

1. Acceptable title can be conveyed.
2. No undisclosed contaminants are found.
3. No substantial loss or damage occurs to either property from any cause.
4. A decision to proceed is upheld in the event of a protest or appeal.
5. The agreement is not terminated by mutual consent or expired.

**D. Are there any consequences for a failure to perform?**

If either party fails to act or comply with the binding exchange agreement, the noncomplying party will be liable for those exchange costs incurred by the other party subsequent to the agreement, including:

1. Land surveys; appraisals; mineral examinations; timber cruises; cultural resource surveys and mitigation; contaminant surveys, control, and cleanup.
2. Title searches and curative actions, removal of encumbrances, arbitration, curing deficiencies preventing the highest and best use of the land.
3. Other expenses of processing the proposed land exchange.

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**CHAPTER 11     Value Equalization.**

**A.     How are values equalized in a land exchange?**

The regulations provide several methods for equalizing values during the exchange process. Any exchange agreement should spell out the expected method of equalization. To equalize the agreed-upon values, either with or without adjusting relative values as compensation for costs, land exchange values may be equalized as listed below in recommended priority order.

**B.     How are single transaction land exchanges equalized?**

1.    Lands or interests may be removed from either side of the exchange.
2.    Either party may make cash payments not to exceed 25 percent of the value of the Federal lands conveyed in the exchange transaction. Cash payments by the United States should be kept to a minimum, since BLM has limited funding for this purpose.
3.    Monetary values may be waived by either party in accordance with regulations. The waiver provision may be authorized only if it balances the exchange values subject to the following conditions.
  - a.    Where the Federal land value exceeds the value of the nonfederal lands, BLM may waive payment of 3 percent of the value of the Federal lands up to \$15,000 under the following conditions:
    - i.    This waiver cannot be used to reduce cash equalization payments that exceed \$15,000. For example, if the difference in value is \$20,000, a waiver of \$15,000 and an equalization payment of \$5,000 is not allowable. The entire \$20,000 equalization payment is required.
    - ii.   Partial waivers are not allowable, the waiver must cover the entire value difference.
    - iii.   The BLM manager must determine in writing how the waiver will expedite the exchange and why the public interest will be better served. Some factors to consider in making your determination include:
      - (1)   Feasibility of removing Federal lands or interest from the exchange.
      - (2)   Feasibility of adding nonfederal lands or interest to the exchange.
      - (3)   Ability or willingness of the nonfederal party to equalize values with cash.
      - (4)   Relative importance of the acquisition. Do the benefits outweigh the cost of the waiver?

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- b.** Where the value of the nonfederal land exceeds the value of the Federal lands, the nonfederal landowner may do the following:
    - i.** Waive payment of 3 percent up to \$15,000 under the same conditions as the Federal waiver.
    - ii.** Waive BLM's payment of the value difference not to exceed 25 percent of the value of the Federal land conveyed.
    - iii.** Donate the difference in value to BLM in accordance with established BLM procedures.
- 4.** Note: Waiving the equalization payment does not change the actual value of the lands. Title insurance should be provided for the full value of the lands involved in the exchange regardless of which option is selected.

**C. What is the procedure for equalizing multiple transaction and assembled land exchanges?**

Equalizing values for exchanges by using assembled land exchange techniques requires the following considerations: (See Chapter 14 on Assembled Land Exchanges.)

- 1.** The Agreement to Initiate an exchange (ATI) may be modified at any time in the exchange process to provide for an assembled exchange procedure. The agreement must contain the method of tracking the value differences between the Federal lands and the nonfederal lands conveyed and restrictions on cash equalization payments consistent with the regulations.
- 2.** The first transaction must convey land to both parties. If values for this transaction are unequal, the difference must not exceed 25 percent of the value of the Federal land conveyed.
- 3.** For all other transactions the value difference between the Federal lands conveyed and nonfederal lands received must remain within 25 percent of the cumulative value of the Federal lands conveyed within the agreement.
- 4.** The waiver provisions cannot be used to equalize every transaction. The 3 percent waiver of the Federal land value up to \$15,000 (the waiver provisions) can be used only to complete the last transaction of the assembled land exchange. The agreement will end with the last transaction.

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**Chapter 12. Title Standards**

**A. What are the required standards for title evidence?**

A critical element in the exchange process is assuring that the United States acquires clear title to nonfederal lands. Under 40 U.S.C. 255, before appropriated funds can be spent on exchanging land or interest in land, the Attorney General must approve in writing the sufficiency of the title to land for the purpose for which it is being acquired. The responsibility for this approval has been delegated to the Office of the Regional or Field Solicitor. The Attorney General's requirements for title standards are generally found in the Department of Justice publication "Standards for the Preparation of Title Evidence in Land Acquisitions by the United States." Revised standards went into effect on March 30, 1992, with adoption of a new form of title insurance policy, "ALTA U.S. Policy - 9/28/91." Instructions for these standards have been sent to each BLM State office. The authorized officer must be sure that deeds and title evidence for lands acquired by exchange conform to these standards and that BLM follows the proper procedures to obtain approval of title from the Office of the Regional Solicitor or Field Solicitor.

**1. What are the acceptable types of preliminary title evidence for nonfederal lands?** The following types of preliminary title evidence are obtained during exchange processing:

- a.** Title Report. In the preliminary exchange evaluation process the authorized officer normally requests that the proponent furnish a preliminary title report from an approved title insurance company. The report shows the current record title owner and all encumbrances on the title.
- b.** Binder or Commitment for Title Insurance. This is a form of preliminary title evidence which binds or commits the title company to issue title insurance to the proposed insured (the U.S.). A commitment also includes a separate schedule called "requirements". The requirements identify what action must be taken and what documents must be submitted in order for the transaction to close and insurance to be issued. After the decision has been made to approve the exchange and all processing steps have been completed up to closing, BLM obtains a binder or commitment for title insurance from the title company in accordance with the agreement to initiate the exchange. The binder or commitment obligates the title company to issue a policy of title insurance to the United States, as the proposed insured. The binder or commitment must specify that the form of title insurance to be issued is the ALTA U.S. Policy - 9/28/91. If the binder or commitment contain an expiration date, the date must be at least 2 years after the date of issuance. The binder or commitment must also state the liability and the premium amounts. Schedule B exceptions for taxes, recorded liens, easements, etc. must show the name of the party who holds the interest of record.

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- c.** Pro-forma Title Policy. Although not required, a pro-forma title policy is a very useful tool especially in simultaneous closings and can be issued to give a clear idea of what the final title policy will look like. An exact unsigned representation of the final policy, the pro-forma policy is issued solely to verify the acceptability of the final title policy and can help give the Solicitor a clear idea of what the final title will be. Using a pro-forma title policy in conjunction with a commitment or binder can be very helpful in assuring the Solicitor that the U.S. will be getting acceptable title especially in a simultaneous closing. The commitment shows the title as it exists before acquisition, the proposed insured, the type of policy to be issued, and the requirements for the transaction to close while the pro-forma gives a representation of what the title will be after the U. S. acquires the land.

**2. What is required as final title evidence for nonfederal lands?**

A title insurance policy is required as final title evidence, except for State lands as described in paragraph No. 3 below. The policy is issued after the deed is recorded according to escrow instructions for exchange closure. The title insurance policy should be issued as follows:

- a.** Be issued on the ALTA U.S. Policy - 9/28/1991 form.
- b.** Be dated as of the date and time the deed was recorded.
- c.** Name the United States of America as the insured.
- d.** Show the estate or interest insured, i.e. fee, mineral, easement, etc.
- e.** Show that the estate or interest insured is vested in the United States of America and its assigns.
- f.** Describe the lands and any reservations included in Schedule A or as a separate schedule or exhibit. Land descriptions must be the same as those in the recorded deed and must cover and properly describe all lands and interests being acquired.
- g.** List in Schedule B any exceptions from coverage as specific encumbrances or defects of record acceptable to the U.S.
- h.** Contain the standard exclusions from coverage and the standard conditions and stipulations.
- i.** Show the amount of liability of the policy, normally the full value of the nonfederal lands. For exchanges involving high-value lands, the State Office may request an exception to allow a lesser amount of liability to lower the cost of the title insurance. (see DOJ standards for formula to determine minimum liability coverage)

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**3. Do State lands have different requirements for title evidence?**

If State lands have never been in private ownership, the State may submit the following in lieu of a binder or commitment and a title insurance policy:

- a.** Certification by a State officer that the property has not been sold or otherwise encumbered, and
- b.** Certification under the official seal of the recorder of deeds or other State officer that no instrument has been executed or recorded which would encumber title to the lands.
- c.** These certifications must be provided before closing so they can be reviewed and a preliminary title opinion obtained. After the deed to the United States is recorded, the certifications should be updated and submitted with the request for final title opinion.

**4. Does BLM provide title evidence for Federal lands?**

The United States is not required to furnish title evidence for Federal lands. BLM will provide information on any third-party rights, existing or proposed reservations, rights-of-way, leases, or other use authorizations on the Federal lands.

**B. What types of conveyance documents are used for land exchanges?**

Documents conveying title to the lands or interest in lands exchanged must be issued as follows:

- 1.** Federal Lands. The authorized officer conveys Federal lands by patent, quitclaim deed, or deed without express or implied warranties, except the warranty as to contaminated substances according to 43 CFR 2200.0-6(j)(1). If both patents and deeds are used on one exchange, each will include the reservations and encumbrances for the land parcels being conveyed under that document. (See BLM Manual 1860 and 1862 and Handbook H-1860-1 for policy and guidance on issuance of patents and deeds.)
  - a.** Patent. Patents are issued if the Federal lands have never been out of United States ownership and where no previous patent has been issued. (See Illustration 8 for a sample patent.)
  - b.** Quitclaim Deed. A quitclaim deed is issued if the Federal lands have been conveyed out of Federal ownership by a patent and reconveyed to the U.S. (See Illustration 9 for a sample quitclaim deed.)
  - c.** Other Deeds Without Warranty. Although a quitclaim deed is normally issued for Federal lands, other types of deeds without warranty may be used pursuant to 43 CFR 2201.8(b)(2). These deeds, such as bargain and sale deeds, must conform to State statutes. (See Illustration 10 for a sample deed.)

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2. Nonfederal Lands. Title to nonfederal lands is conveyed according to Department of Justice title standards and State legal requirements. (See Illustration 11 for a sample warranty deed.) Title is normally conveyed by a general warranty deed or other comparable type of deed acceptable under the laws of the State in which the land is located. The requirement that the deed be a warranty deed may be waived by the Regional Solicitor on a case by case basis. For states, municipal corporations, and certain other entities the Solicitor may waive this requirement, and title may be conveyed by other suitable deed or conveyance document. The deed must be signed, sealed, attested, and acknowledged by all grantors and their spouses, as required by local law. Deeds issued by corporations must be accompanied by a copy of a resolution or order of its board of directors or other governing body authorizing the deed to be issued. As a minimum the nonfederal conveyance document must state the following:
- a. The capacity in which any grantor acts in other than an individual capacity, i.e. attorney-in-fact, etc.
  - b. The name of the grantor in the body of the deed and in the acknowledgment. The deed must be signed by the grantor exactly as the name appears on the title insurance policy.
  - c. The marital status of the grantor, if appropriate.
  - d. That the grantee is the "United States of America and its assigns."
  - e. That the deed is made "for and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 et seq.)" as amended or other exchange authority, if appropriate.
  - f. That the actual consideration is the exchange of other real property (and an equalization payment in the amount of \$XXXX.XX, if appropriate) if such a statement of consideration is required under State law.
  - g. The proper legal description of the conveyed lands in accordance with the Public Land Survey System or other means as prescribed by State law.
  - h. That all of the grantor's right, title, and interest in the lands are conveyed. Any reservations or exceptions to the grantor must be listed in the deed. When the land is conveyed subject to prior third-party rights or interests such as rights-of-way, easements, or mineral interests, these rights or interests should be listed in the deed just as they are shown in the title insurance policy. General or standard exceptions and exclusions from coverage often found in title insurance policies should not be shown in the deed.
  - i. The name of the acquiring agency at the end of the deed (not within the granting, habendum, or warranty provisions of the deed).
  - j. The deed must be signed, sealed, attested, and acknowledged by all grantors and their spouses, as required by local law. Deeds issued by corporations must be accompanied by a copy of a resolution or order of its board of directors or other governing body authorizing issuance of the deed. You will also need certification from the Secretary of State that the corporation is in good standing and qualified to do business in the State.



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3. Conveyance Documents Issued by States. Normally states do not furnish warranty deeds. The form of conveyance document, if not a warranty deed, must be approved by the Solicitor. In addition, the State must certify that the State officer executing the conveyance was authorized to do so under State law.

**C. What are title encumbrances and how are they dealt with?**

The United States cannot accept title to lands in which there are reserved or outstanding interests which would adversely affect the validity of the title to the land or which would interfere with the use and management of the land. Title to the nonfederal lands offered in the exchange must be free of all such encumbrances or other objections or title defects.

1. Title Clearance. Any encumbrances shown in the title evidence must be eliminated, released, or waived according to requirements of the preliminary opinion of title issued by the Regional or Field Solicitor.
2. Administratively Unacceptable Encumbrances. Encumbrances which would adversely affect the title or use of the land by the United States are unacceptable and must be eliminated. These include taxes and assessments, judgments, mechanic's or other liens, deeds of trust, and mortgages. Contracts of sale, claims relating to decedent estates, some land use or occupancy leases, joint tenancies, tenancies in common, and dower and curtesy rights must also be eliminated.
3. Administratively Acceptable Encumbrances. These encumbrances do not usually adversely affect the title or use of the land by the United States and do not need to be eliminated. The authorized officer must request a waiver of any of these encumbrances, and the waiver request must justify why the encumbrance will not affect BLM's management of the lands. Administratively acceptable encumbrances include the following:
  - a. Encumbrances resulting from interest previously granted or reserved to the U.S. and for which title to the reserved interest will merge when the outstanding interests are conveyed to the U.S. (i.e. mineral reservations to the U.S. and such previous grants to the U.S. as rights-of-way and road use agreements). This type of encumbrance will normally be deleted by the title insurance company, but if not deleted, it may be waived. Convert any interest in the nonfederal lands previously granted or reserved by the United States, such as a 44 LD 513 appropriations or an acquired easement to FLPMA rights-of-way reservations.
  - b. Most reservations of minerals and mineral leases. The Solicitor should review these reservations early in the process.
  - c. Third party permits and easements. ( If not onerous.)
  - d. Easements for public roads, utilities, and other public rights.
4. Clearing Unacceptable Encumbrances. Normally unacceptable encumbrances can be cleared by the title insurance company in the closing process. The Solicitor's advice should be secured in requesting curative action on unacceptable encumbrances that cannot be readily cleared. (See the BLM Acquisition Processing Handbook, H-2101-1, for more information on encumbrance and possible curative actions.)

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**D. What is the process for obtaining title opinions?**

A preliminary and a final title opinion will normally be obtained from the Regional or Field Solicitor for all land exchanges. In an assembled exchange where simultaneous closing procedures are not being used, but expedited closing is necessary, and if the preliminary title report doesn't show any unacceptable encumbrances, BLM may obtain a final title opinion from the Regional Solicitor, without first asking for a preliminary title opinion. However, a preliminary opinion must be obtained when simultaneous closing procedures are to be used. Title opinions will be obtained under the procedures outlined below.

1. Preliminary Opinions. A preliminary opinion is normally requested after the decision to approve the exchange has been made and all case processing steps have been completed up to closing. You may request a preliminary opinion during early processing of the land exchange if questions concerning title encumbrances require solicitor assistance.
  - a. Field managers may request a preliminary opinion by memorandum through the State Office. The transmittal memorandum should include the exchange serial number and a statement on the proposed disposition of each item listed in the title evidence. Items to be eliminated should be named. A request for waiver of the items administratively acceptable should be included. The memorandum should include statements on administrative settlements and disposition of range improvements.
  - b. The following items must be attached to the memorandum:
    - i. Title evidence
    - ii. Draft deed
    - iii. Certificate of Inspection and Possession
    - iv. Contaminated substances survey
    - v. Vicinity map.
    - vi. Draft escrow instructions (only if required by your Solicitor)
    - vii. Preliminary opinion document. If acceptable to the Regional Solicitor, the preliminary opinion may be drafted for the Solicitor on Solicitor's Office letterhead or as a statement to be signed on the request itself. The opinion should be written according to a standard format agreed to by the Solicitor. (See Illustration 12 for sample format.) All items in the title evidence must be shown as being either eliminated or waived.

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- 2.** Final Opinion. The final opinion should be requested after escrow closes. When escrow procedures are not used, the opinion should be requested after the nonfederal party has submitted the recorded deed and the final title evidence showing no unacceptable encumbrances. The authorized officer requests a final opinion from the State Office by memorandum or short note of transmittal. The request should include the following:
- a.** Similar to the memorandum used for the preliminary opinion (see above) and handled in the same manner, the transmittal memorandum should contain the following information and statements:
    - i.** A statement that the applicable items listed in the preliminary opinion have been eliminated and that no more items have been added.
    - ii.** A statement that all items remaining in the title evidence have been previously found to be administratively acceptable and waived in the preliminary opinion.
  - b.** The following items are attached to the transmittal memorandum:
    - i.** The original final title evidence.
    - ii.** The original recorded deed to the nonfederal lands.
    - iii.** The updated certificate of inspection and possession.
    - iv.** The official case file or other information from the case file required by the Solicitor.
    - v.** The final opinion document.
    - vi.** Updated contaminate survey, if needed.
  - c.** Final Opinion Document. The final opinion document should be prepared for the Regional or Field Solicitor according to the format approved by the Solicitor. (See Illustration 12 for a sample format.) The final opinion document may be incorporated in the request memorandum and include an approval line for the Solicitor's signature. (See Illustration 13.)

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**Chapter 13. Land Exchange Closing Procedures.**

**A. Does BLM use a simultaneous closing to transfer title?**

Simultaneous closing is the normal method of closing all land exchanges. Pursuant to 43 CFR 2201.9(a), unless otherwise agreed upon, patents or deeds to Federal lands and deeds to nonfederal lands must be issued (delivered) simultaneously, subject to acceptance of title. The method of closing, whether simultaneous or non-simultaneous, is specified in the agreement to initiate the exchange.

**B. How is a simultaneous closing accomplished?**

A simultaneous closing is normally accomplished using an **escrow**. Escrow is a process by which title documents or funds are held by a neutral third party, such as a title or escrow company, until the terms of the escrow instructions are satisfied. When these terms are satisfied, the title document or funds are delivered and transferred.

**1. What are the advantages of simultaneous escrow closing?**

- a. Helps eliminate such title encumbrances on nonfederal lands as taxes, mortgages, and other liens.
- b. Simplifies the closing process, i.e., delivery and recording of documents and payment of taxes and other costs.
- c. Conforms to the normal closing practices used by other government agencies and in private transactions.
- d. Increases confidence of the nonfederal parties because they are conveying their property and receiving the Federal property at the same time.

**2. What steps are involved in a simultaneous closing?**

The following steps are taken to complete a simultaneous closure using escrow:

- a. Preliminary title evidence should have been reviewed earlier in the exchange evaluation and feasibility process. The State Office and Regional Solicitor will have reviewed the title evidence to assure that clear title will be obtained.
- b. After the notice of decision is issued, the BLM obtains from the title company a binder or commitment of title insurance which obligates the company to issue the United States a title insurance policy subject only to those encumbrances waived by the Regional or Field Solicitor. (See Chapter 12 for the requirements for the binder or commitment document.) BLM also prepares draft escrow instructions to be used by the escrow officer to conduct the simultaneous closing and to require the removal of unacceptable encumbrances. Escrow instructions are a written agreement signed by both parties and the Escrow Officer which detail the procedures for closing a transaction and direct the escrow officer on how to proceed. (See Illustration 14 for a checklist of the content for the escrow instructions and Illustration 15 for sample escrow instructions.)
- c. BLM normally request a draft deed for the nonfederal lands in accordance with Department of Justice standards. Deeds prepared by the proponent must be

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closely reviewed for compliance with these standards. (See Illustration 11 for a warranty deed format.)

- d. The authorized officer requests a preliminary title opinion from the Regional or Field Solicitor. (See Chapter 12 for more information on requesting the preliminary opinion.)
- e. Upon receipt of the preliminary title opinion, the authorized officer has all parties sign the escrow instructions and submits the instructions to the escrow officer to begin closing procedures.
- f. The authorized officer transmits a request to the State Office to issue the conveyance document for the Federal lands. A final certificate form is not needed, but the request for patent should list the reservations and third-party rights that the conveyance will be made subject to. The State Office also provides all information needed for the reservation or suggested wording for nonstandard reservations. The request should be accompanied by a copy of the signed escrow instructions, the complete official case file, and all other documentation related to the exchange.
- g. The State Office prepares the conveyance document in accordance with BLM Manual 1860. (See BLM Handbook H-1860-1 and 1862-1 for more instructions on how to issue conveyance documents. (See Illustrations 8 and 11 for sample exchange patent and deed.) The conveyance document is then delivered to the title company to be placed in escrow.
- h. If the United States must make an equalization payment or pay any other costs, the State Office will prepare a land acquisition voucher certificate to request a check from the National Business Center. (See instructions on BLM form 1370-32) The check may be sent directly to the authorized officer or to the escrow officer.
- i. Just before closing of escrow, the authorized officer must execute an updated Certificate of Inspection and Possession, Form 2060-3.
- j. Upon closing of escrow the escrow officer sends the following items to the authorized officer: the recorded deed to the nonfederal land, the policy of title insurance showing title vested in the United States, a copy of the recorded conveyance document to the Federal land, the equalization payment (if applicable), and closing statements. The authorized officer then forwards these items to the State Office along with the updated Certificate of Inspection and Possession and any other information requested by the preliminary title opinion or needed for the request to the Regional or Field Solicitor for final title opinion.
- k. When the deed is recorded, the United States accepts title to the nonfederal land. (See discussion on Title Acceptance below.)

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- I. The State Office must take the following post-conveyance actions:
  - i. Request the final title opinion from the Regional or Field Solicitor. (See list at Chapter 12, section D.2.b.)
  - ii. Upon receipt of the recorded deed and conveyance document, update the official records to show the Federal land conveyed and the nonfederal land acquired.
  - iii. Send a notice of conveyance to the Governor. (See illustration 16.)
  - iv. Return the right-of-way and other third-party authorization case files to the field office for further action.
  - m. After conveyance the authorized officer must notify right-of-way holders that the public land has left Federal ownership and adjust rentals if applicable. If all the land within the right-of-way is conveyed, the right-of-way case can be closed.

**C. What are the steps for a non-simultaneous closing?**

- 1. Based on review of the preliminary title evidence by your State Office and Regional or Field Solicitor you should be aware of all title defects and be confident of their elimination.
- 2. When you complete all case processing steps requests a preliminary title opinion from the Regional or Field Solicitor through the State Office. Make your request in the same manner as a simultaneous closing.
- 3. Upon receipt of the preliminary title opinion, you will requests that the nonfederal landowner provide the items listed below.
  - a. A recorded deed prepared in accordance with Department of Justice standards.
  - b. Final title evidence in accordance with Department of Justice standards showing title vested in the United States and free from any encumbrances not waived by the Regional Solicitor. Title evidence is obtained in the same format as a simultaneous closing.
  - c. Equalization payment, if needed.
- 4. Upon receipt of the above items requests a final opinion of title and final patent or deed to the Federal lands from the Regional or Field Solicitor through the State Office. Along with the request for final opinion, submit to the State Office the original case file and all documents relating to the exchange, including an updated Certificate of Inspection and Possession.
- 5. Upon receipt of the final title opinion the State Office issues the conveyance document in accordance with BLM Manual 1860. (See Illustrations 8 through 11.)

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**D. When is title to land acquired in an exchange accepted by the United States?**

In accordance with 43 CFR 2201.9(a) for simultaneous closing, the United States accepts title to the nonfederal lands when the conveyance documents are recorded in the county records. To confirm that acceptable title is vested in the United States, BLM obtains a final title opinion after closing. For exchanges using non-simultaneous closing procedures, the authorized officer issues a decision accepting title.

**E. How and when are lands acquired by the United States opened to entry?**

The nonfederal lands acquired by the United States are automatically open to entry and appropriation under the public land and mineral laws 90 days after acceptance of title by the United States. The timeframe starts at midnight the day title is recorded in the county records.

1. Consistent with the exchange regulations, lands acquired by exchange within any unit of the National Forest System, National Park System, National Wildlife System, National Wild and Scenic River System, National Trails System, National Wilderness Preservation System, or any other system established by Congress, the California Desert Conservation Area, or any national conservation or national recreation area established by Congress will immediately be reserved for and become part of the unit or area within which they are located without further action by the Secretary, and will be managed in accordance with all laws, regulations, and land use plans that apply to such areas.
2. Unless action is taken pursuant to 43 CFR Part 2300 to segregate the land for a withdrawal proposal within the 90-day period, the lands automatically will be open to the public land and mineral laws on the 91st day, except to the extent otherwise provided by law.
3. Where significant, unique, or fragile resources justify a protective withdrawal, the authorized officer must initiate a withdrawal petition-application pursuant to 43 CFR Part 2300. This action should be taken at the same time as the environmental documentation to complete the exchange.
4. Land will be open under the new regulations only to the level consistent with the management direction of surrounding lands, i.e., ACEC management or habitat management plans.
5. Since a withdrawal petition-application must be approved by the Washington Office and a notice published in the *Federal Register* before the lands are segregated for the proposed withdrawal, the withdrawal process must begin at least 90 days before the United States accepts title to the lands to ensure no break in the segregation of the lands.



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**F. What are the requirements for notation of public land records upon title transfer?**

When title transfers you must note (update) the public land records with the following actions:

1. Federal Lands Conveyed. Update the record of the Federal lands and interests that have been conveyed out of Federal ownership.
2. Nonfederal Land Acquired. Update all records that the lands have been reconveyed and will be automatically opened at midnight on the 90th day following the acceptance of title (date of simultaneous closing and of recording in county records) unless the lands are otherwise withdrawn or segregated. The segregation or withdrawal of newly acquired lands may be automatic consistent with FLPMA. Check the 43 CFR 2200 regulations.
3. Third-Party Interests Acquired. Serialize and update the records of existing authorized third-party uses on lands acquired through exchange. These steps protect the rights of existing authorized users and place BLM and other Federal land users on notice of the authorized use.

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**Chapter 14 Assembled Land Exchange Process**

**A. When do you consider an assembled land exchange?**

1. Federal lands open to exchange usually consist of many parcels of limited value. Often these parcels cannot be exchanged in individual transactions because the value of each parcel does not warrant the expense of conducting the exchange. By combining several parcels into an assembled land exchange, processing becomes more efficient and cost effective.
2. When BLM has identified nonfederal lands for acquisition but the land owners do not want to acquire Federal lands, a proponent (facilitator) can act as a broker/agent and market the BLM lands or acquire nonfederal lands to later be exchanged with BLM. Various parcels can be marketed by the proponent/facilitator until enough value is generated to equalize the values in the exchange.
3. BLM may lack the funding to conduct land exchanges. Assembled land exchanges can provide the flexibility needed to make facilitating BLM land exchanges practical to private sector brokers or agents. Proponents can facilitate land exchanges with most or even all fees and processing costs absorbed by exchange participants. To facilitate exchanges, the proponent/facilitator needs the flexibility to consider many potential Federal and nonfederal parcels and to package the exchange in response to market conditions.

**B. What are the different types of assembled land exchanges?**

1. **Single Transaction.** Single transactions are processed in the same manner as routine two-party exchanges. The only difference is that several Federal or nonfederal parcels may be involved in a single transaction.
  - a. Conveyance documents may be issued to more than one entity.
  - b. The exchange case file must document how the exchange proponent was compensated for the conveyance of the Federal and nonfederal lands.
  - c. Exchange agreements and escrow instructions must reflect the method of closing and title conveyance.
2. **Multiple Transactions.** These transactions involve multiple parcels exchanged in two or more closings over a period of time. If an exchange project involves multiple transactions, a modification to the Agreement to Initiate an exchange (ATI) must be negotiated. Separate transactions do not need to be of equal value. As long as the difference in values is within the 25 percent limit, equalization of values between the Federal and nonfederal lands can be deferred for 3 years or until the final conveyance is completed. The assembled exchange provisions of the ATI must include language providing for multiple transactions, including the following provisions:
  - a. Describe the Federal and nonfederal lands proposed for inclusion in the agreement. Because of the nature of the exchange program, the exchange may involve a project area, such as an ACEC or wild and scenic river corridor. The State Office must develop and monitor a ledger account to track outstanding balances following completion of each transaction. (See Illustration 17). State Director approval is required for use of the ledger.

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- b.** The ledger account must be equalized every 3 years in accordance with the regulations, but need not be closed out.
- c.** The proponent must agree to the balances, and the administrative record should provide the status of the ledger account at the completion of each transaction. This statement should be incorporated into the letter sending the conveyance documents to the proponents. (See Illustration 18.)

**C. How do you manage ledger account balances?**

Differences in the ledger account balance cannot exceed 25 percent of the cumulative value of the Federal land conveyed.

- 1.** The first transaction of an assembled land exchange must include the exchange of both Federal and nonfederal land. In later transactions it is preferable but not required that both Federal and nonfederal lands be conveyed.
- 2.** A statement of value may be used when all parcels involved in all transactions of the assembled exchange meet the statement of value criteria. You may use a statement of value when the total value of the Federal lands involved in the exchange do not exceed \$150,000.00.
- 3.** Balances owed by the Federal Government should also be kept as low as practical. These balances are debts incurred by the Federal Government. These debts must be paid if the exchange is terminated at the end of any transaction.
- 4.** Transactions resulting in proponents' owing land values to the Federal Government should be avoided. When practical, keep the ledger equal or keep the government owing the proponent land values. If the exchange cannot be completed or collapses, collection procedures are time consuming and expensive. To protect the government's interest, use one of the following methods to ensure balancing the ledger account:
  - a.** Nonrevocable letter of credit for the value difference.
  - b.** Escrow accounts that can give instructions to disperse funds at a set time or under certain conditions. Funds may be deposited in an interest-bearing escrow account. Accruing interest is added to the balance due BLM on the ledger account. These funds will be payable to the United States before the escrow account is closed. When the funds are dispersed, they will be deposited in the General Treasury.
  - c.** Bonding. Bonding can be requested for the value difference in an exchange. The amount of bonding should be based on estimates of or actual differences in ledger account values at the completion of transactions. Use any bonding method approved under current guidelines for bonding in the regulations or manual. For example the 2800 rights-of-way manual.

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- d. Waived Bonding. Bonding can be waived under the following conditions:
  - i. Funds in a contributed fund account provided by the proponent exceed amounts owed the Federal Government.
  - ii. The value differences are consistent with the waiver criteria.
  - iii. The proponent has a record of successful business transactions with BLM or other Federal agencies.
  - iv. The proponent is a State government or similar agency that cannot legally secure bonds or otherwise provide surety.

**D. How is an assembled land exchange terminated?**

The Federal Government or the exchange proponent may terminate the assembled land exchange by a written notice to the other party. All values must be equalized when a ledger account is involved (i.e., payment of any outstanding balances). The exchange agreement should spell out the procedures and conditions for terminating the assembled land exchange. Value differences (3 percent or \$15,000, whichever is less) can be waived only for the final transaction to complete an assembled land exchange.

**E. Can you use a third-party proponent?**

It is both feasible and practical to use proponents (i.e., a broker, agent, or nonprofit organizations) to facilitate and package assembled land exchanges. Proponents generally have more experience marketing parcels and may have more contacts with potential buyers and sellers. Packaging of assembled land exchanges can be time consuming. Because the processing fees for a large assembled land exchange can be low for any single participant (i.e., purchaser of Federal land), it is practical for the proponent to defray costs for facilitating the exchange. Consider the following when using third-party exchange proponents:

1. Selection/Review of a third-party proponent. Exchange proposals with proponents should be carefully reviewed to assure that BLM wants to pursue this relationship. Entering into a proponent exchange is generally a commitment to a multi-year project with the relationship scrutinized in both public and political arenas. Third-party proponents should be screened to assure that they understand the BLM exchange policies and process, understand and support RMP land tenure objectives, have experience dealing with complex real estate transactions, and are financially secure.
2. Letter of Introduction. BLM should give the third-party exchange proponent a letter of introduction that explains the exchange process and the relationship between the proponent and BLM. This communication will avoid the potential for the public's misunderstanding the exchange procedures and the roles of the proponent and BLM.
3. Full Disclosure. Third-party exchange proponents should be required to disclose to sellers of land their intent to transfer the land being purchased to BLM. Proponents should also be required to disclose to BLM their purchase price of all offered nonfederal lands. These conditions should be included in the exchange agreement.

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### CHAPTER 15

#### Chapter 15 Competitive Land Exchange Options

In a competitive land exchange, BLM offers Federal lands or interests to the highest bidder or person making the best proposal for conveyance of lands having important resource values. There are no statutory or regulatory prohibitions against competitive exchanges. BLM may complete these transactions or use a third-party facilitator. In this type of exchange BLM determines the value of Federal land by open market bidding.

##### A. When is it appropriate to consider using a competitive land exchange?

A competitive land exchange may be appropriate when:

1. A competitive interest exists for the Federal lands;
2. The Federal lands have a high economic value;
3. A rapidly changing market does not allow accurate determination of market value;
4. Federal land has unique or special characteristics presenting special appraisal problems;
5. A controversy is likely if all interested parties are not given an equal opportunity to acquire the Federal land.

##### B. What competitive land exchange methods are available?

###### 1. Competitive proposal exchanges.

Under this method BLM requests land exchange proposals from parties interested in acquiring the identified Federal lands. BLM bases its determination of the best proposal on an evaluation of the resource values offered in the individual exchange proposals. The Forest Service calls this the "prospectus method." Both BLM and FS have completed exchanges using this method.

###### 2. Competitive bid exchanges.

In this variation BLM offers Federal land for exchange using competitive or modified competitive bidding procedures. A modified NOEP would be issued requesting that interested parties submit cash bids for specific parcels of Federal land. The bids must be at least equal to the approved appraisal of the Federal lands. BLM must reserve the right to reject all bids, specifically any that are less than the minimum bid. BLM would normally accept the highest cash bid and enter into an assembled exchange agreement with the high bidder and establish a ledger account. The amount bid would be shown on the ledger account and the money would be deposited in an interest bearing escrow account. BLM would then identify nonfederal lands to be acquired and conveyed to the United States until the bid amount is balanced out. Use an assembled land exchange escrow closing procedure. All conveyance documents remain in the escrow until BLM approves title to the nonfederal lands involved in the exchange and the transaction is closed in escrow. Using this competitive approach, BLM secures the nonfederal lands, markets the Federal lands, transfers ownership and accepts title to the nonfederal lands. BLM may also use a third party to facilitate this type of a competitive bid exchange.

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**C. How are competitive land exchanges processed?**

BLM processes a competitive land exchange in the same manner as a noncompetitive exchange. The only differences are the initial invitation for bids or request for proposals and the use of a high bid or best offer to set the market value of the Federal lands.

BLM initiates the competitive aspect of an exchange by publishing a notice of competitive exchange. This modified NOEP explains the competitive land exchange process and describes what a proponent must include in a submission for a competitive proposal exchange.



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**Chapter 16 Other Federal Agency Exchanges.**

**A. What responsibility does BLM have when other agencies complete exchanges within their administrative boundaries?**

Federal lands administered by other agencies, such as National Forests, National Parks, and National Wildlife Refuges may be disposed of by exchange under various authorities. When other agency withdrawn lands are involved, BLM responsibility is normally limited to approval of mineral reports, issuance of conveyance documents, and records notation. These actions will be handled by the State Office. The first checklist below identifies the normal processing steps for a Forest Service exchange. The second checklist provides the normal processing steps for a Fish and Wildlife Service or National Park Service Exchange.

**1. Forest Service Exchange Checklist**

Step Party Action

- |     |     |   |
|-----|-----|---|
| 1.  | FS  | Finalizes exchange offer in "Statement of Intent" and publishes Notice of Exchange.   |
| 2.  | FS  | Requests BLM to provide status report, Master Title Plats, Historical Indices, assign serial number, note public land records and conduct cadastral survey, if necessary.   |
| 3.  | BLM | Assigns serial number to case, notes land records segregating lands and transmits information requested in step 2 to FS.  |
| 4.  | FS  | Initiates necessary examinations of lands including appraisal.  |
| 5.  | FS  | Completes NEPA process.   |
| 6.  | FS  | Submits request to BLM for concurrence to convey minerals, including mineral potential reports for Federal lands. There is no mineral potential report required when the FS is reserving the minerals in the exchange.  |
| 7.  | BLM | Reviews mineral reports and transmits findings to FS.   |
| 8.  | FS  | Prepares and publishes/posts decision notice.   |
| 9.  | FS  | Executes Exchange Agreement with proponent.   |
| 10. | FS  | Obtains preliminary title approval from General Counsel.  |
| 11. | FS  | Requests BLM to issue patent or deed (BLM issues a quitclaim deed for previously patented reconveyed lands). Package to BLM includes preliminary title opinion, mineral conveyance concurrence and draft patent and deed to non-Federal lands, which includes a listing of all reservations and third party rights. |
| 12. | BLM | Executes patent or quitclaim deed and returns to FS. Notes land records per patent.   |
| 13. | FS  | Obtains final title approval from General Counsel.  |

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14. FS Sends copies of signed and recorded deed, title insurance policy, and title approval and acceptance to BLM.
15. BLM Notes land records as appropriate and closes case.

**2. Fish and Wildlife Service/National Park Service Exchange Checklist.**

<u>Step</u>	<u>Party</u>	<u>Action</u>
1.	FWS/NPS	Receives or initiates exchange proposal and conducts preliminary negotiations with nonfederal landowner.
2.	FWS/NPS	Requests BLM to provide status report, Master Title Plats, Historical Indices, assign serial number, and prepare mineral report.
3.	BLM or FWS/NPS	Assigns serial number to case, notes public land records to segregate land and transmits information requested in Step 2.
4.	FWS/NPS	Prepares Exchange Agreement and initiates necessary examinations of land, including appraisal.
5.	BLM	Reviews completed mineral report and transmits to FWS/NPS. All costs associated with BLM writing mineral reports are borne by the FWS/NPS.
6.	FWS/NPS	Completes examinations, reports, NEPA process and appraisal.
7.	BLM	Prepares and publishes public notice.
8.	FWS/NPS	Obtains preliminary title opinion from Regional Solicitor.
9.	FWS/NPS	Requests BLM to execute patent. Request includes copy of preliminary title opinion, draft deed for non-Federal land, and list of any reservations or stipulations to be included in the patent.
10.	BLM	Executes patent or quit claim deed and transmits to FWS/NPS. Notes public land records.
11.	FWS/NPS	Obtains final title opinion from Solicitor. Transmits recorded deed and final title opinion to BLM for records notation.
12.	BLM	Makes records notations, as appropriate. Closes case.

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**B. What is BLM's responsibility when BLM managed lands are exchanged for land within the administrative boundary of another Federal Agency?**

BLM may help other Federal agencies acquire a nonfederal inholding through exchange for Federal lands under BLM administration. These exchanges must meet BLM's guidelines and policy concerning public interest and must conform to BLM land use plans. FLPMA exchange authority will generally be used; however, other agency authorities may be applicable. Proposals received by Field Offices should be referred to the State Office for review prior to any action being taken.

1. **Agreements.** Complete an "Interagency Agreement" which spells out the steps and responsibilities of each agency and who will pay the cost associated with the Exchange. Benefitting agencies must reimburse BLM for costs associated with these proposals.
2. **Processing.** Proposals will be processed in the same manner as other FLPMA exchanges. The benefitting agency will be responsible for completion of, or reimbursing BLM for all costs of making the exchange, including all reports and appraisals. All reports and appraisals will be done to BLM standards and must be approved by BLM.

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# ILLUSTRATIONS

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### Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
<b>, PROCESSING STEP</b> <span style="float: right;"><b>PRE-PROPOSAL PHASE:</b></span>			
Provide proponent with information packet.			
Pre-proposal meeting: Informal meeting where proponent, management, and specialists meet to review the proposal.			
<b>INITIAL PROPOSAL PHASE:</b>			
<b><u>Initial Proposal submitted should include:</u></b> a. Legal descriptions of non-federal and Federal lands.			
b. Maps of non-federal and Federal lands. Scale required: 1:100,000. (1:24,000 maps may be required at a later date.)			
c. Provide a title report that identifies any prior existing rights and encumbrances (mineral rights, surface rights, easements, etc.) on non-federal lands. (Review for title conflicts.)			
d. Water Rights			
1. Identify water rights on non-federal lands. What stage is title to the water rights in (i.e., application, permit, certificate, vested, etc.)? Which will transfer to BLM?			
2. Identify developed waters on non-federal lands that do not have water rights.			
3. Identify wells on non-federal lands. They must have a well log and water right if functional; if not, they must be abandoned according to State laws.			
4. Provide a copy of the water rights culture map that shows which lands can be irrigated, and how many acres are involved on non-federal lands.			
5. If BLM is going to acquire any irrigation water rights, provide the most current water rights assessment fee for the non-federal lands. If only part of a "proof of appropriation" is being transferred, then we need information on how much our portion of the assessment fee will cost.			
6. Provide a copy of the current chain of title for any water rights being transferred to the BLM.			
e. Identify proposed future uses of Federal lands.			
f. Identify all participants in the exchange, including who may ultimately acquire Federal lands (this includes permittees and all land owners involved).			
<b>, <u>EXCHANGE TEAM ESTABLISHED</u></b>			
<b>, <u>Exchange team conducts initial review and makes recommendations by resource.</u></b> (Each member of the respective home team makes recommendations to the exchange team representative.)			

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Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
a. Identify Federal lands with high resource values (i.e., lands the Bureau wishes to retain).			
b. The exchange team will identify potential benefits of non-federal lands by each resource and identify the possible need for withdrawal.			
<b><u>CULTURAL RESOURCES:</u></b>			
a. Review for consistency with the Resource Management Plan (RMP).			
b. Conduct initial cultural resource records review of the proposal.			
c. Determine if Federal lands have known historic properties or have high potential for containing historic properties.			
1. Archaeologist may recommend deletion of some or all of the high sensitivity parcels.			
2. Proponent is notified of parcels having high potential for containing numerous or significant cultural resources so that he or she can make an informed decision as to whether or not to proceed with cultural resource inventory.			
d. Determine inventory intensity and requirements.			
e. Determine if non-federal lands contain known cultural resources (including Native American traditional properties) or have good potential for containing significant cultural resources.			
1. Determine if and how non-federal cultural resources would be managed and what the advantages and disadvantages of acquiring certain property types (e.g., historic ranch buildings).			
2. Consider if historic properties are of such high value that special protective measures such as creation of Areas of Critical Environmental Concerns (ACECs), nomination to the National Register of Historic Places, mineral withdrawal, preparation of management plans, or limitations on public access are advisable.			
<b><u>FORESTRY:</u></b>			
a. Review for consistency with the RMP.			
b. Determine if permanent fixed forest plots on Federal lands are affected.			
c. Determine if timber on non-federal and Federal lands involves high or low production sites.			
d. Identify existing forest management projects on Federal lands.			
e. Identify access issues on non-federal and Federal lands as they relate to public use of forest resources.			
f. Determine if forest lands on non-federal and Federal lands as being operable/non-operable.			



**H-2200-1 LAND EXCHANGE HANDBOOK**

Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
g. Identify critical forest use areas on non-federal and Federal lands.			
<b><u>HAZARDOUS MATERIALS (HAZMAT):</u></b> a. Review for consistency with the RMP.			
b. Conduct initial screening of non-federal and Federal lands for presence of contaminants.			
c. Review agency records and conduct interviews with people knowledgeable of past uses of the subject lands.			
<b><u>LANDS:</u></b> a. Review for consistency with the RMP.			
b. Establish casefile. (This may be done in the Final Proposal Phase)			
c. Enter case recordation data in the Automated Land and Mineral Record System (ALMRS). (This may be done in the Final Proposal Phase)			
d. Assemble Master Title Plats for casefile.			
e. Check other land uses (Meridian, Township, and Range (i.e., MTR), and ALMRS report).			
f. Check for the presence of mining claims, withdrawals, etc.			
g. Review title report. Initiate a resolution to any title conflicts.			
h. Identify potential benefits or concerns of non-federal and Federal lands.			
i. Identify access issues for non-federal and Federal lands, such as easements to/through non-federal lands. Also request a review from Support Services for public access, and transportation plan needs on Federal lands.			
<b><u>MINERALS:</u></b> a. Review for consistency with the RMP.			
b. Identify potential benefits or concerns of non-federal and Federal lands.			
c. Formulate recommendations to the exchange team concerning the mineral resources to be retained by the BLM, to be conveyed to the proponent, or to be acquired by the BLM, as well as to identify the need for appraisal, and the level of reports.			
<b><u>NOXIOUS WEEDS:</u></b> a. Review for consistency with the RMP.			
b. Identify concerns on non-federal and Federal lands.			
<b><u>PALEONTOLOGY:</u></b> a. Review for consistency with the RMP.			

**H-2200-1 LAND EXCHANGE HANDBOOK**

Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
b. Conduct initial Paleontological records review of the proposal.			
c. Determine if Federal lands have known significant Paleontological resources.			
1. Archaeologist and geologist may recommend deletion of some or all of the high sensitivity parcels.			
2. Proponent is notified of parcels having high potential for containing significant Paleontological resources so that he or she can make an informed decision as to whether or not to proceed with inventory.			
d. Determine if the non-federal lands have known significant Paleontological resources.			
1. Determine what steps would be required to protect acquired significant Paleontological resources.			
<b><u>RANGE:</u></b>			
a. Review for consistency with the RMP.			
b. Identify what allotments are involved and who the permittees are on the non-federal and Federal lands.			
c. Identify any issues or concerns on non-federal and Federal lands (projects, access, etc.).			
d. Determine the benefits of the non-federal lands.			
<b><u>RECREATION:</u></b>			
a. Review for consistency with the RMP.			
b. Review non-federal and Federal lands for recreation values. Identify any issues or concerns on non-federal and Federal lands (projects, access, etc.).			
c. Verify that the Federal lands are not within Wilderness Study Areas (WSAs) or Special Recreation Management Areas (SRMAs).			
<b><u>WATER RESOURCES:</u></b>			
a. Review for consistency with the RMP.			
b. Identify Public Water Reserves (PWRs) on Federal lands.			
c. Identify water sources and locations on the non-federal and Federal lands.			
d. Identify whether non-federal or Federal lands are within a municipal watershed or wellhead protection area that we want to acquire or retain.			
e. Identify whether non-federal or Federal lands are within a Watershed Management Plan (WMP) that we want to acquire or retain.			

**H-2200-1 LAND EXCHANGE HANDBOOK**

Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
<b><u>WILDLIFE/FISHERIES/THREATENED, ENDANGERED, AND SENSITIVE SPECIES:</u></b>			
a. Review for consistency with the RMP.			
b. Identify critical wildlife habitats on non-federal and Federal lands, including those for Threatened, Endangered and Sensitive species.			
c. Identify existing habitat improvement projects on non-federal and Federal lands.			
d. Identify relevant components of proposed or existing activity plans on non-federal and Federal lands that may be impacted by the exchange.			
e. Prepare baseline maps delineating areas of concern on non-federal and Federal lands as applicable.			
f. Identify access issues on non-federal and Federal lands as they relate to public use of wildlife resources.			
g. Research available wildlife data for non-federal and Federal lands from Nevada Division Of Wildlife (NDOW) and from the U.S. Fish & Wildlife Service (USFWS), if applicable.			
<b><u>WILD HORSES:</u></b>			
a. Review for consistency with the RMP.			
b. Identify if the non-federal and Federal lands are within Herd Management Areas (HMAs).			
c. Identify benefits on non-federal and Federal lands.			
, Draft exchange agreement (non-binding) - Team lead and/or team.			
, Negotiations with proponent (team lead and/or management).			
<b>FINAL PROPOSAL PHASE:</b>			
, Final proposal agreed upon (by proponent and BLM).			
, Prepare feasibility analysis.			
, If State Director concurrence is required. Prepare a memo and submit the feasibility analysis to State Director for concurrence with the land exchange proposal.			
, Approved feasibility analysis received from State Director.			
, Distribute feasibility analysis to land exchange team. (The proposal should be serialized and entered into the ALMRS at this time, if not done previously.)			
, Finalize exchange agreement (non-binding).			

## H-2200-1 LAND EXCHANGE HANDBOOK

Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
, Request record notation and segregation by state office.			
, Develop mailing list (include adjacent landowners, land users, local/state government and interest parties).			
, Notice of Exchange Proposal published for 4 weeks in newspaper and mailed with a 45 day comment period from initial publication date. (Initiates public review, responses will focus on environmental analysis).			
a. Initiates 2-year notification to all range users (sent certified).			
b. Simultaneously issued for Native American consultation.			
c. News release.			
d. Public meeting/workshop.			
e. State Clearinghouse.			
f. Consult, Cooperate, and Coordinate (CCC) with Wild Horse Groups if Federal lands are within an HMA.			
g. Send request to County Planning commission for comments.			
, Obtain title policy from the proponent (this can be done at any time depending on the quality of the preliminary title report).			
a. Submit title policy to the solicitor for review.			
b. Receive title policy from the solicitor.			
, Initiate appraisal process (preliminary) - set time frames based on other needs such as cultural.			
<b>ENVIRONMENTAL ANALYSIS PHASE:</b>			
, Resource evaluations: Cultural, fisheries, forestry, hazmat, mineral, noxious weeds, paleontology, range, recreation, water, wildlife, wild horses. Project lead requests baseline information from specialists:			
<b>CULTURAL RESOURCES:</b>			
a. Literature search undertaken and cultural resource overview prepared.			
1. Overview for large projects or areas containing abundant and complex resources will require approval by the Bureau prior to commencement of inventory.			
2. Final inventory standards and scheduling arranged.			
b. Inventory undertaken and completed.			
c. Inventory report prepared.			
d. Inventory report reviewed (returned for revision if necessary).			
e. State Historic Preservation Office (SHPO) consulted concerning evaluation of cultural properties and project effects.			

**H-2200-1 LAND EXCHANGE HANDBOOK**

Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
f. Mitigative measures are devised to negate any adverse effects to historic properties.			
<b>FORESTRY RESOURCES:</b>			
a. Calculate acres of forest lands on non-federal and Federal lands.			
b. Calculate volumes by species and associated values on non-federal and Federal lands.			
c. Assess impacts to forest management on non-federal and Federal lands.			
<b>HAZMAT:</b>			
a. Conduct Phase I Environmental Site Assessment according to ASTM-E 1527-94. Assessment includes the following:			
1. Record search.			
2. Site visit.			
3. Report.			
b. If cleanup is desired to remove contaminants, prepare a Level II or Level III assessment.			
1. Ensure that contaminants are properly characterized and cleanup, if warranted, is completed properly.			
<b>LANDS:</b>			
a. Identify land users of record.			
b. Identify reservations to the United States.			
c. Identify 3rd party uses that patent will be subject to.			
d. Identify access issues.			
e. Document rights to be exchanged (i.e., surface/ subsurface on non-federal and Federal lands).			
<b>MINERALS:</b>			
a. Mineral Potential Report.			
b. Mineral Appraisal (if high mineral development potential).			
c. List 3809 Plans of Operation, in order that these can be closed or changed to an easement, ROW, Bond release, etc.			
d. Identify where a new Plan of Operations may be required.			
<b>PALEONTOLOGY:</b> Paleontological survey required if Cenozoic sediments are involved (if EA is done by a 3rd party contractor, they will do the survey).			
<b>RANGE:</b>			
a. Calculate percent Federal land.			

## H-2200-1 LAND EXCHANGE HANDBOOK

Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
b. Calculate and document Animal Unit Months (AUMs) for non-federal and Federal lands by section.			
c. Identify range improvements involved and reservations needed.			
d. Prepare vegetation description.			
e. Prepare 2-year waiver notices to permittees receiving reductions once the selection of non-federal and Federal land parcels are final (includes determining value of range improvements, amount of contributions, etc). Waiver notices will be sent certified.			
<b><u>RECREATION:</u></b>			
a. Assess recreation uses/values of non-federal and Federal lands and assess impacts to recreation access for both non-federal and Federal lands.			
b. Identify Visual Resource Management (VRM) classes for both non-federal and Federal lands.			
<b><u>WATER:</u></b>			
a. Address PWRs on the Federal lands.			
b. Identify 100-year flood plains.			
c. Identify water sources and locations on the Federal lands.			
d. Identify water sources and locations on non-federal lands.			
e. Identify water rights on Federal lands: those held by the BLM, and those held by others.			
f. Identify water rights on non-federal lands: those held by the proponent and those held by others.			
g. Identify developed waters on the Federal lands. If a pipeline is involved, will all the lands transfer where the pipeline is located? Do they all have water rights?			
h. Identify developed waters on non-federal lands. If a pipeline is involved, will all the lands transfer where the pipeline is located? Do they all have water rights?			
<b><u>WILDLIFE/FISHERIES/THREATENED, ENDANGERED, AND SENSITIVE SPECIES:</u></b>			
a. List or initiate development of applicable wildlife conservation easements.			
b. Identify Threatened and Endangered Species that may be affected by the land exchange to determine if Section 7 Consultation is required.			
<b><u>WILD HORSES:</u></b>			
a. Determine number of non-federal land acres within Herd Management Area (HMA - whether or not the exchange involves HMA would be determined in step 2).			
b. Determine if Federal lands are within an HMA.			

## H-2200-1 LAND EXCHANGE HANDBOOK

Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
c. Identify range improvements for retention on Federal lands that are critical for wild horses.			
d. Adjust HMA boundaries if necessary.			
, Prepare NEPA document (Environmental Assessment (EA) including Finding of No Significant Impact (FONSI) & Decision Record (DR) or an Environmental Impact Statement (EIS) and Record of Decision (ROD) taking into consideration comments received during public review.			
<b>DECISION PHASE:</b>			
, Notice of decision published one time in the newspaper. Date of publication begins the 45-day comment period, with 60-day notice to Governor.			
, Prepare a Biological Assessment and begin Section 7 Consultation if a "may affect" situation exists to threatened or endangered species.			
, <b><u>If protested or appealed:</u></b>			
a. Comment/protest analysis sent by memo to State Director (if applicable).			
b. Prepare a draft response.			
c. Protest is upheld or dismissed by the State Director.			
, <b><u>If upheld:</u></b> Decision may be appealed to Interior Board of Land Appeals (IBLA). If not appealed/protested, or if it is dismissed by the IBLA, go on to the next step.			
<b>CLOSING PHASE:</b>			
, Binding exchange agreement (required if you have Evidence of Contamination).			
, Request title evidence. Prepare draft escrow and closing instructions - finalize and send out to State Office with final patent/deed request.			
, If you want to withdraw the non-Federal land, prepare a withdrawal Petition/Application and forward to SO for processing to initiate a 2-year segregation to avoid an automatic opening within 90 days of title transfer.			
, <b>Prepare draft patent/deed request (includes following):</b>			
a. Final Hazmat survey.			
b. Issue R/Ws for range improvements to be retained on patented lands.			
c. Include R/Ws-easements needed to maintain access to Federal lands and ensure access to newly acquired lands.			
d. Finalize easements.			
e. Identify floodplain restrictions.			

## H-2200-1 LAND EXCHANGE HANDBOOK

Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
Have proponent provide a copy of all water right documents on the water rights that the BLM will acquire. This will include (but is not limited to) applications, vested proofs, permits, certificates, proofs of completion, and beneficial use, and transfer the documents to the BLM.			
Finalize patent request (including escrow and closing instructions) and send to State Office along with case file.			
State Office prepares conveyance documents and delivers them to Title Company to be placed in escrow.			
Copies of recorded patents and deeds sent back to district by State Office.			
<b>POST CONVEYANCE ACTIONS:</b>			
Actions to be taken by all resources, including conducting appropriate resource review in accordance with Section 201 of FLPMA by all disciplines.			
<b><u>CULTURAL RESOURCES:</u></b> a. Monitor historic properties that were exchanged but in which the BLM retains an interest (an easement or title to the archaeological deposits).			
b. Record, evaluate, monitor, protect and recover data from newly acquired sites as appropriate.			
<b><u>FORESTRY:</u></b> a. Adjust sale area boundaries if necessary.			
b. Revise sale plans.			
c. Re-calculate volumes for sustained yield harvest levels.			
d. Prepare new sale area maps with updated property boundaries/land status.			
e. Prepare memo to permanent fixed plot file if Federal land is converted to nonfederal land.			
f. Close sale areas (or portions of) if those areas were converted to private ownership.			
<b><u>HAZMAT:</u></b> Doesn't apply to post-conveyance actions.			
<b><u>LANDS:</u></b> a. Prepare undated Certificate of Inspection and Possession (Form 2060-3)			
b. Request Final Title Opinion from the Regional Solicitor.			
c. Send Notice of Conveyance to Governor and local officials.			
d. Update ALMRS.			
e. Adjudicate and update case recordation on rights existing prior to title transfer on all affected R/W files.			



**H-2200-1 LAND EXCHANGE HANDBOOK**

Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
f. Update ALMs - Reduce acreage amount and calculate rental for the next billing period.			
g. Process withdrawal petition/application if required.			
h. Update Land Use Plans (LUPs) & RMPs.			
i. Check accounts and refund any unused contributed funds.			
<b><u>MINERALS:</u></b>			
a. Update, modify, or close casefile, if necessary.			
b. Review bond if necessary.			
<b><u>PALEONTOLOGY:</u></b>			
a. Record, evaluate, monitor, protect, and recover data from newly acquired sites as appropriate.			
<b><u>RANGE:</u></b>			
a. Revise grazing systems (Allotment Management Plans, Multiple Use Decisions, etc.) and/or writing new grazing use agreements/decisions.			
b. Re-calculate percent Federal land (if final legal description is different from what was in the EA).			
c. Update the Grazing Authorization & Billing System (GABS). Includes updating the allotment cross reference, permit schedule and stipulations, basic schedule and stipulations and allotment information (private and public acres and AUMs).			
d. Issue new grazing permits.			
e. Prepare a decision to reduce preference if the 2-year waiver was not signed by permittee. (New permit will be issued with the start date at the end of the 2-year notice.)			
f. Prepare new Dependent Property Summary in case file to reflect adjustments in permitted use.			
g. Prepare memo to case file documenting adjustments in permitted use due to the land exchange.			
h. Update Historical Index in case file.			
i. Prepare new project files and issue cooperative agreements for range improvements acquired in exchange.			
j. Adjust Rangeland Improvement Project System (RIPS) and abandon/revise existing project files for range improvements lost in exchange.			
k. Close grazing case files/monitoring files when entire allotment is converted to nonfederal land in exchange.			
l. Prepare maps for grazing case files and monitoring files which reflects new land status for allotment.			
m. Update RMP (acreage, etc.).			

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
n. Notify range user of any agreed upon range improvements for compensation on Federal lands that need to be removed. These range improvements are on Federal lands that will go to a new land owner, other than the current range user.			
<b><u>RECREATION:</u></b>			
a. Update Off Road Vehicle designation acreage (District Register and Recreation Management Information System (RMIS).			
b. Update SRMA acreage (RMP maintenance and RMIS).			
<b><u>WATER:</u></b>			
a. BLM will provide the proponent with a copy of all water right documents on the water rights on Federal lands. This will include (but is not limited to) applications, vested proofs, permits, certificates, proofs of completion and beneficial use, and transfer documents as required by the State Engineer.			
b. Record water right deeds at the Courthouse.			
c. Prepare the necessary paperwork to transfer the water right ownership from the proponent to BLM and file with State.			
d. Locate water sources that BLM acquired with the Global Positioning System (GPS).			
e. Add inventory data to database.			
f. Plot new water sources on 7.5' inventory maps.			
g. Prepare water right files for newly acquired water rights.			
h. Change inventory maps to reflect the non-federal and Federal lands.			
i. Enter water right changes (acquired and lost) in district database.			
j. Research Nevada Division of Water Resources "township cards" on recently acquired lands and make copies of permits from the State microfilm.			
<b><u>WILDLIFE/FISHERIES/THREATENED, ENDANGERED, AND SENSITIVE SPECIES:</u></b>			
a. Develop monitoring plan for conservation easements.			
b. Update planning documents and maps; include Habitat Management Plans (HMPs) or other activity plans, databases, etc.			
<b><u>WILD HORSES:</u></b>			
a. Adjust HMA boundaries if necessary.			
b. Adjust wild horse numbers (up or down, depending on new AUM number).			
c. Issue decision reducing or increasing herd numbers and changing HMA boundaries.			

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 1 - Project Management Tracking

LAND EXCHANGE CHECKLIST	ACTION TAKEN	INITIALS	DATE
<u>OTHER:</u>			

**Illustration 1 - Project Management Tracking**

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 2 (a) - Feasibility Analysis

#### LAND EXCHANGE FEASIBILITY ANALYSIS Ellison Land Exchange Proposal, N-60593

#### BACKGROUND

During the summer and fall of 1995, representatives of Barrick Goldstrike Mines Inc. ("Barrick") and Ellison Ranching Company ("Ellison") (referred to collectively as "the Proponents") met with representatives of the Elko District to informally discuss a potential land exchange. As a result of those meetings, the Proponents submitted a land exchange proposal to the Elko District, Bureau of Land Management on January 25, 1996.

#### 1.0 EXCHANGE PROPOSAL

The Nonfederal and Federal Lands, which lie entirely within Elko County, are shown on the attached maps. The Nonfederal Lands are described in Exhibit "A" and consist of approximately 45,187 acres of which 32,261 acres are owned by Barrick and 12,926 acres owned by Ellison. The Federal Lands are described in Exhibit "B" and consist of approximately 53,985 acres. Acreage would be adjusted to comply with 43 CFR §2201.6 after completion of the appraisal. It is likely that Federal Lands would be deleted to equalize values. The mineral estates on both the Federal and Nonfederal Lands will be exchanged to the extent possible. A royalty of three percent (3%) on the gross value of all mineral products would be reserved to Ellison Minerals, Inc. on the Nonfederal Lands acquired from Barrick (see Section 5.2). In turn, a similar royalty would be reserved to the United States on those Federal Lands with similar geologic structure to the subject Nonfederal Lands. The proposed land exchange would be consistent with the planning goals set forth in the Elko Resource Management Plan (RMP) and Rangeland Program Summary for the Spanish Ranch Allotment.

#### 2.0 LAND USE PLANNING AND RESOURCE VALUES

##### 2.1 Federal Lands

The Federal Lands are adjacent to and intermingled with private land owned by Ellison. Ellison currently holds Federal grazing permits on the Federal Lands which are located in the Spanish Ranch Grazing Allotment. The addition of the Federal Lands to the Ellison Ranch would be beneficial to the Ranch's cattle and sheep grazing operation and would eliminate areas that are currently difficult for the BLM to manage because of the mix of private and Federal land ownership in the area. The Federal Lands lie within a retention area and have not been specifically identified for disposal by exchange. However, as the Nonfederal Lands also lie within a retention area, the action would be consistent with the planning goals set forth by the RMP.

##### 2.2 Nonfederal Lands

The lands are located within the Spanish Ranch and Squaw Valley Grazing Allotments. Ellison also holds a grazing permit on the Squaw Valley allotment. The lands are surrounded by and intermingled with BLM lands and include the following streams: Upper Rock Creek, Toe Jam Creek, Red Cow Creek and the headwaters of Fourmile Creek. Red Cow, Toe Jam, and Rock Creeks are designated in the RMP as High Priority Stream Habitat. In addition, Upper Rock Creek and Toe Jam Creek have been identified in the U.S. Fish and Wildlife Service's Recovery Plan as existing and potential recovery habitat for the Lahontan cutthroat trout, a threatened species. Red Cow Creek also includes valuable red band trout habitat. The red band trout is listed as a sensitive species in Nevada by the BLM. All in all, a total of approximately 52 stream miles would be acquired. Acquisition of the lands will also consolidate into Federal ownership a large block of land utilized in wild horse herd management.

#### 3.0 PUBLIC BENEFITS

##### 3.1 Proposed Disposal

The exchange would result in the disposal of land that is difficult to manage because of the intermingled nonfederal lands owned by the Proponents. The proposed disposal of the Federal Lands is consistent with the goals and criteria set forth in the RMP and governing Federal regulations. Long-term public benefits would include increased management flexibility and reduced conflict between Federal land uses and private property.

**Illustration 2 (a) - Feasibility Analysis**

**3.2 Proposed Acquisition**

If acquired, the Nonfederal Lands would be managed under the principles of multiple use consistent with the RMP. The proposed exchange will achieve more logical and efficient BLM management by consolidating federal lands. Better management and protection of sensitive resources within the RMP will be achieved by acquiring valuable threatened species habitat and riparian areas. Federal lands would also be consolidated within a wild horse herd management area.

**4.0 VALUE**

Neither the Federal Lands or Nonfederal Lands have been appraised. This would be accomplished by established procedures under the direction of the Nevada State Office appraisal staff.

**5.0 TITLE CONSIDERATIONS**

**5.1 Federal Lands**

Certain of the Federal Lands have never been surveyed, while other Federal lands may need to be resurveyed prior to conveyance. The Cadastral Survey Office will be asked to review the current record and determine any survey requirements for these lands. The affected lands may be conveyed at a later date after any necessary surveys have been completed.

Certain of the Federal Lands are subject to unpatented mining claims (see Exhibit C). These claims would need to be abandoned prior to conveyance of the Federal land to the Proponents. Approximately 520 acres of isolated federal land could result if certain claims are not abandoned. The Proponents have indicated they would diligently pursue negotiations with the claimants in this regard; however, any Federal Lands with valid mining claims remaining would likely have to be deleted from the exchange. It is anticipated that any deletion of these lands would not have an adverse impact on the exchange as a whole.

The Federal Lands are encumbered by various rights-of-way and range improvements which would be identified during case processing. Patent would be issued subject to those rights, as well as other valid existing rights. The BLM would also determine during public review and/or case processing any necessary reservations of access across any of the Federal Lands to preserve access to other federal lands.

A number of public water reserves are present on the Federal Lands. Subject to Washington Office approval, Ellison Ranches would convey an equivalent number of vested and/or appropriative water rights on the Nonfederal lands to compensate for this loss. The Proponents would actively pursue obtaining formal water rights for an equivalent number of appropriate perennial water sources on the Nonfederal Lands. It is understood that successful completion of the exchange may depend upon conveyance of the water rights to the United States.

A royalty of 3 percent of the gross value of all mineral products would be reserved to the United States on lands of similar geologic nature in order to compensate for the royalty reservation attached to the Barrick Nonfederal Lands (see Section 5.2 below).

**5.2 Nonfederal Lands**

Barrick Offered Lands - A reservation to Ellison Minerals, Inc. of a 3 percent royalty of the gross value of all mineral products (see red tabbed page in the Title Report, prepared by Stewart Title Co., for the subject reservation).

**6.0 POSSIBLE PROBLEMS OR CONFLICTS**

The Proponents and the BLM will consult and coordinate with the Elko County government. The Proponents will make presentations to the county commissions at a public meeting to request the commissioner's support. The Proponents anticipate that the county commissioners and the majority of the public will support the exchange.

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 2 (a) - Feasibility Analysis

#### 7.0 PROCESSING COSTS AND FUNDING

The Proponents would assume the estimated processing costs as follows:

<u>Task</u>	<u>Est. Cost</u>
Mineral Report (BLM staff funding)	\$ 53,000
Biological/T&E Reports	\$ 15,000
Cultural Survey*	\$ 400,000
Hazardous Materials Report	\$ 3,000
Environmental Assessment	\$ 20,000
Publication	\$ 1,000
Appraisals	\$ 15,000
Title Preparation	\$ 2,000
Misc. Costs	\$ 5,000
<hr/> TOTAL	\$ 514,000

\* Based on a average cost of \$10 an acre for large acreage inventories

As appropriate, funding for BLM staff functions and administrative procedures would be provided through a contributed funds account. Costs for any required surveys to be funded by the proponent will be determined by the NSO cadastral survey department.

Except for preparation of the mineral potential report, the BLM's share of the processing costs would be primarily in the form of direction and review. It is estimated that this would approach 3 workmonths.

#### 8.0 PROPOSED SCHEDULE

Initially, upon approval of the feasibility analysis, the Federal Lands would be segregated. Processing is then expected to begin immediately. The BLM and the Proponents intend to work diligently to process the exchange expeditiously. However, the parties also understand that unexpected delays outside of their control may be encountered.

#### 9.0 RECOMMENDATION

The proposed exchange is in the public interest and will result in acquisition of important habitat for the Lahontan cutthroat trout, a threatened species and other important riparian habitat. Finally, the majority of the funding will be provided by the Proponents. It is our recommendation to proceed.

#### RECOMMENDED BY:

\_\_\_\_\_  
David Vandenberg, Manager  
Non-Renewable Resources

Date\_\_\_\_\_

\_\_\_\_\_  
Helen Hankins, District Manager

Date\_\_\_\_\_

#### APPROVED:

\_\_\_\_\_  
Ann Morgan, Nevada State Director

Date\_\_\_\_\_

**Illustration 2 (a) - Feasibility Analysis**



IN REPLY REFER TO:



# United States Department of the Interior

BUREAU OF LAND MANAGEMENT  
 Palm Springs-South Coast Resource Area  
 690 West Garnet Avenue  
 P.O. Box 2000  
 North Palm Springs, CA 92258-2000



2200  
 (CA-066.63)

## Memorandum

To: State Director, (CA-931)  
 Thru: District Manager, California Desert District  
 From: Area Manager, Palm Springs-South Coast Resource Area  
 Subject: McNoughton Exchange Proposal Feasibility Analysis

This analysis concerns the proposed exchange of approximately 2,950 acres of public land in the Coachella Valley area for 1,294.05 acres of undisturbed nonfederal land with T&E species habitat, within the Marron Valley, McAlmond Canyon, and Hauser Mountain areas. The exchange proponent is Dwight McNoughton, P.O. Box 9817, Bakersfield, California 93389. Mr. McNoughton is working through Environmental Lands Solutions, with Mr. James B. Carter as Agent. This exchange is being considered under the authority of Section 206 of the Federal Land Policy and Management Act of October 21, 1976, as amended. Maps are submitted at the end of this analysis showing the federal lands and the nonfederal lands.

### 1. Exchange Proposal

#### Federal Lands:

Containing 2950.0 acres, more or less

Exchanging of the above federal lands would be in conformance with the California Desert Conservation Area Plan, 1980, as amended. The lands are listed as "Limited" to "Moderate" Use.

#### Nonfederal Lands:

LEGAL DESCRIPTION DELETED

Containing 1,294.05 acres, more or less

#### **Federal Lands**

The federal lands identified for disposal are parcels that are close to Interstate 10 or Interstate 10 passes through them. Creosote and burrobush are the dominant plant species. There is a possibility of the Coachella milk-vetch (proposed Federal listing) in this area where there is blow sand. The area is not in Category I or II for the desert tortoise. Wildlife species most likely found on this parcel include coyote, blacktailed jackrabbit, desert cottontail, desert and longtail pocket mice, phainopepla mourning dove and others. There may be a possibility of the flat-tailed horn lizard (proposed Federal listing). A survey will be taken to verify the existence or non-existence of T&E species on all the federal parcels.

#### **Nonfederal Lands**

The nonfederal lands meet BLM's basic criteria for exchange properties and would add land to the corridor between Otay Mountain and Hauser Mountain. The parcels are contiguous to BLM land holdings, without structures, and gives linkage between federal land parcels. The acreage of this property can be adjusted to give a range of pricing so that it will be equal to the value of the Coachella Valley property when the appraisals are completed.

**PUBLIC BENEFITS AND RELATIONSHIP TO LAND USE PLANNING**

A primary purpose for acquisition of the nonfederal lands is to consolidate federal land holdings in the Otay, McAlmond Canyon and Hauser Mountain areas, which will serve to enhance management effectiveness. The U.S. Fish and Wildlife Service, in cooperation with the BLM and other Federal Government and state agencies, established the Multiple Species Conservation Program (MSCP). Some of the nonfederal lands are included in the Concept Plan for San Diego National Wildlife Refuge.

**CONFLICTS WITH OTHER RESOURCES AND USES**

There are 18 right-of-ways noted on the Master Title Plats for the federal lands. All right-of-way holders will be notified regarding the proposed land exchange. T. 7 S., R. 8 E., Sec. 32 is noted on the MTP as BOR lands. BOR only wants to retain a portion of the NE1/4 of this section. CSO is in the process of correcting BOR's withdrawn lands list and by the time the exchange is ready for patent issuance, the updated information should be noted to the MTP's.

**LAND VALUES AND FUNDING**

Land values are estimated at \$300.00 to \$500.00 an acre for the federal parcels, and approximately \$1,000.00 to \$3,000.00 an acre for the nonfederal parcels. Values will be determined by an appraisal that will be authorized subsequent to an exchange agreement being completed. The Non-binding Agreement to Initiate an exchange will be executed once this Feasibility Analysis is approved and will specify the funding needs of BLM and the funding requirements of the Proponent.

The proponent is anxious to get this exchange underway; therefore, he will pay for the Environmental Assessment, all biological analysis for T&E species, mineral report, legal newspaper ads, and appraisal. BLM will do the archeological report, and coordinate all necessary documentation.

**RECOMMENDATION**

The federal lands are suitable for exchange. Acquisition of the nonfederal lands will improve manageability of the corridor between Otay Mountain and Houser Mountain. I recommend that the exchange proposal be approved for implementation.

Proposed By:

\_\_\_\_\_  
Julia Dougan, Area Manager

\_\_\_\_\_  
Date

Recommended By:

\_\_\_\_\_  
Henri Bisson, District Manager

\_\_\_\_\_  
Date

**H-2200-1 LAND EXCHANGE HANDBOOK**

**Illustration 3 - Record Notation Request**

2200 (XXX)  
XX-XXXXXX

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
FIELD OFFICE

Memorandum

Date:

To : State Director, \_\_\_\_\_

From: Field Manager, \_\_\_\_\_

Subject: Record Notation Request - Segregation of Lands for Exchange Serial # \_\_\_\_\_

Please make a notation on the appropriate public land records, segregating the federal lands described below from appropriation under the public land laws and mineral laws for a period of (specify time, not to exceed 5 years), as provided for in 43 CFR 2201.1-2.

DESCRIPTION OF LANDS

If you need additional information, please call \_\_\_\_\_  
at (xxx) xxx-xxxx or (xxx) xxx-xxxx.

(signed)

**Illustration 3 - Record Notation Request**

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 4(a) - Agreement to Initiate an exchange

UNITED STATES  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
N-60262

#### AGREEMENT TO INITIATE A LAND EXCHANGE

This Agreement to Initiate a land exchange is made and entered into this \_\_\_\_\_ day of \_\_\_\_\_, 1996, pursuant to Section 206 of the Act of October 21, 1976, as amended (43 U.S.C. 1716), between the United States of America, acting by and through the Department of the Interior, Bureau of Land Management, hereinafter called BLM, and BSR Associates, a Nevada Limited Partnership, hereinafter called BSR.

**WHEREAS**, BSR hereby certifies that it has legal ownership of the non-Federal lands and/or interests in lands and has the ability to provide title to the lands and/or interests in lands that is acceptable to the United States of America.

**WHEREAS**, BSR hereby certifies that it is a Nevada Limited Partnership subject to the laws of the State of Nevada, and is in good legal standing with the State of Nevada.

**WHEREAS**, BLM and BSR desire to express their intent to accomplish a voluntary exchange of certain lands and/or interests in lands and to establish certain terms and conditions for the exchange.

**NOW THEREFORE**, that in consideration of the mutual agreements and promises contained herein, BLM and BSR agree as follows:

#### 1. DESCRIPTION OF LANDS OR INTEREST IN LANDS BEING CONSIDERED FOR EXCHANGE.

BSR shall convey to the United States of America by warranty deed free of lien or encumbrance, except as otherwise provided herein, the lands and all interest therein, including but not limited to the surface and mineral estate, all improvements, water rights and all other interests, from a pool of lands described in Exhibit A attached hereto, subject only to reservations and exceptions acceptable to the BLM.

BLM shall deliver to BSR a United States patent, and/or other appropriate deeds to lands and/or interests in lands, including the surface and mineral estate, all improvements, water rights and all other interests, from a pool of lands as described in Exhibit B attached hereto and made a part hereof.

The lands and/or interests in lands described in Exhibit B will be conveyed subject to the following:

- A. Valid existing rights, rights-of-way, and other authorized land uses.
- B. Reservation of a right-of-way thereon for ditches and canals constructed by the authority of the United States, Act of August 30, 1890, 43 U.S.C. 945.
- C. Other matters or reservations which may be required by the BLM.

#### 2. EXCHANGE PROCESSING STEPS

BLM and BSR agree to provide each other survey plats, maps, and other appropriate similar information to aid in completing the exchange.

A Feasibility Analysis for this exchange has been completed and approved by the BLM State Director. Upon execution of this Agreement, BLM will segregate from all forms of appropriation under the public land laws, including the mining laws, but not the mineral leasing laws, the Federal lands described in Exhibit B.

The valuation of the lands described in Exhibit A and Exhibit B will be determined before conveyance by a qualified appraiser using the principles contained in "Uniform Appraisal Standards for Federal Land Acquisitions." The final appraisal shall be subject to the review and approval of the authorized officer of the BLM.

In order to equalize the agreed upon values of the lands and/or interests in lands involved in this exchange to the maximum extent possible, BLM and BSR agree to modify the exchange proposal by adding or excluding lands and/or interests in lands. In the event that values can not be equalized, cash equalization payments not to exceed 25 percent of the value of the Federal lands and/or interests of lands may be used.

## **H-2200-1 LAND EXCHANGE HANDBOOK**

### **Illustration 4(a) - Agreement to Initiate an exchange**

Both parties agree not to take any action which would diminish or negate either the market or resource values to the lands and/or interests in lands and the intrinsic values found on, under or over said lands and/or interests in lands, except as agreed to by both parties 60 days in advance of any such action being taken.

BLM will obtain an opinion of title for the non-Federal lands from appropriate representatives of the United States Department of Justice in accordance with current policy and procedures, and will furnish a copy to BSR.

BLM will publish a Notice of Exchange Proposal in a local newspaper pursuant to 43 CFR 2201.2 in accordance with the schedule described in Exhibit C, attached hereto.

BLM will examine the non-Federal and Federal lands and, pursuant to the provisions of Exhibit D, will examine and review all required resource management documents for adequacy, including but not limited to resource inventories for cultural resource management, mineral reports, and hazardous materials contamination surveys, which will be completed in support of National Environmental Policy Act (NEPA) requirements in accordance with the schedule indicated in Exhibit C.

If, as a result of the resource studies and NEPA analysis, it is determined that the exchange is compatible with BLM policies and programs, is in compliance with all regulations, and is found to be in the public interest, BLM shall decide whether or not to approve the exchange proposal. Subsequent to the decision to approve the exchange proposal, BLM will issue a Notice of Decision pursuant to 43 CFR 2201.7-1 in accordance with the schedule indicated in Exhibit C.

Lands described in Exhibit B will be conveyed subject to existing Federal grazing permits, unless waived by the grazing permittee. Such grazing shall be valid for a period of 2 years from the date that the permittee has received notification of the land exchange. In accordance with Part 402(g) of the Act of October 21, 1976, as amended (43 U.S.C. 1752), BSR agrees to provide reasonable compensation to grazing permittees for the value of their interest in authorized permanent improvements.

### **3. RESPONSIBILITIES AND COSTS ASSOCIATED WITH PROCESSING THE EXCHANGE**

The parties agree that the responsibility for performing the services required to process the exchange, including the costs for accomplishing such services, shall be assigned in accordance with Exhibit D, attached hereto.

### **4. HAZARDOUS SUBSTANCES**

Each party to this Agreement hereby declares that to their knowledge there have been no known or suspected release, storage, or disposal of hazardous substances on the Federal or non-Federal lands involved in the exchange, other than a known oil spill site and a known illegal dump, which are both located on the Federal lands in T. 33 N., R. 70 E., section 20.

BSR and BLM will conduct appropriate contaminant surveys on the Federal and non-Federal lands in accordance with the schedule indicated in Exhibit C. The expenses of completing the contaminant surveys shall be borne by BSR.

If hazardous substances are determined to exist on the Federal or non-Federal lands, BLM or BSR may choose to either: (a) conduct further investigation and/or perform necessary remediation of the contamination site; (b) remove the lands so affected from the exchange; or (c) terminate the exchange.

### **5. PHYSICAL ACCESS, RIGHT TO ENTER**

The parties to this agreement hereby grant permission to the other parties to enter and physically examine the lands offered by the other party. Such examination shall be by non-surface disturbing methods.

### **6. RELOCATION**

Both parties agree that relocation benefits pursuant to 49 CFR 24.101 will not be paid and are not applicable to either party to this exchange. If relocation issues are found to affect or potentially affect any portion of the Federal or non-Federal lands, those parcels so affected will be removed from the exchange proposal.

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 4(a) - Agreement to Initiate an exchange

#### 7. CLOSING

The exchange will be closed upon the completion of all necessary components of the exchange process, including but not limited to resource management documents and inventories, the NEPA documentation, protest and appeal resolution, appraisal reports, public participation and notification activities, and preparation of conveyance documents. The closing will be handled as follows:

Pursuant to 43 CFR 2201.9, title to the non-Federal and Federal lands and/or interests in lands will be transferred simultaneously through escrow procedures. Escrow instructions will be prepared and delivered to the First American Title Company in Elko, Nevada prior to closing. All escrow costs will be paid by BSR.

At the time of closing, BSR will deposit in escrow, (1) a warranty deed conveying the non-Federal lands and/or interests in lands, subject to those reservations and exceptions permitted in the opinion of title, to the United States of America, and its assigns, pursuant to 43 CFR 2201.8(b)(1), and (2) a Policy of Title Insurance (ALTA U.S. Policy - 9/28/91), or an endorsement to a previously furnished policy, in the amount equal to the appraised value of the nonfederal lands, showing title vested in the United States of America and fee from all encumbrances except those permitted in the opinion of title, pursuant to 43 CFR 2201.8(a) and 2201.8(c).

If required, any necessary equalization payment as provided for in 43 CFR 2201.6 will be deposited in escrow.

At the time of closing, BLM will deposit in escrow the patent or appropriate conveyance document to the Federal lands which will contain those reservations and exceptions shown in Exhibit B.

#### 8. AMENDMENT/TERMINATION OF AGREEMENT

This Agreement may be amended in writing by consent of the parties. In addition, this Agreement may be terminated at any time upon written notice by either party.

#### 9. NON-BINDING NATURE OF AGREEMENT

The expenditure or advance of any money or the performance of any work by the United States, herein under, may require appropriation of money by the U. S. Congress or the allotment of funds; this Agreement is contingent upon such appropriation or allotment being made.

The United States of America is required to process this exchange in accordance with the Federal Land Policy and Management Act of 1976, as amended; the Federal Land Exchange Facilitation Act of 1988; the National Historic Preservation Act of 1966, as amended; the Endangered Species Act of 1973, as amended; the National Environmental Policy Act of 1969; Interior Department Manual 602 DM2; and 43 CFR 2200, which requires certain actions on the part of the United States, such as public notice and consideration of public comments to the exchange proposal. This proposal for the exchange of lands hereunder may have to be abandoned as a result of information obtained through this procedure. BLM and BSR agree that abandonment of this proposal as a result of new information obtained through this processing procedure shall relieve the United States of America from all obligations under this Agreement. In the event that the exchange cannot be completed, no liability shall accrue to the United States of America.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate as of the last date shown below.

BSR Associates

Bureau of Land Management

By: \_\_\_\_\_

By: \_\_\_\_\_

Title: \_\_\_\_\_

Title: \_\_\_\_\_

Date: \_\_\_\_\_

Date: \_\_\_\_\_

**H-2200-1 LAND EXCHANGE HANDBOOK**

Illustration 4(a) - Agreement to Initiate an exchange

**EXHIBIT A**  
NON-FEDERAL LANDS

**EXHIBIT B**  
SELECTED FEDERAL LANDS



## H-2200-1 LAND EXCHANGE HANDBOOK

Illustration 4(b) - Agreement to Initiate an exchange.

### UNITED STATES DEPARTMENT OF THE INTERIOR BUREAU OF LAND MANAGEMENT N-60593

#### AGREEMENT TO INITIATE A LAND EXCHANGE

THIS AGREEMENT TO INITIATE A LAND EXCHANGE (the "Agreement") is made this \_\_\_\_\_ day of \_\_\_\_\_ pursuant to Section 206 of the Act of October 21, 1976, as amended, between the BUREAU OF LAND MANAGEMENT on behalf of the United States of America, hereinafter called the BLM, and ELLISON RANCHING COMPANY ("Ellison"), and BARRICK GOLDSTRIKE MINES INC. ("Barrick") hereinafter referred to collectively as the Proponents.

WHEREAS, Ellison hereby certifies that it is a Nevada corporation subject to the laws of the State of Nevada and is engaged in a ranching business in Elko County and other areas on northeastern Nevada with its headquarters at the Spanish Ranch in Independence valley.

WHEREAS, Barrick hereby certifies that it is a Colorado corporation and subject to the laws of the State of Nevada and is engaged in the mining business in Elko and Eureka Counties.

WHEREAS, in June 1995, Barrick acquired from Ellison nonfederal lands located in Elko and Humboldt Counties that had been used by Ellison in its ranching operations (the "Midas Unit").

WHEREAS, as part of the agreement regarding Barrick's acquisition of the Midas Unit from Ellison, Barrick agreed to propose and pursue a land exchange for at least 30,000 acres of land with the objectives of consolidating and extending the nonfederal land owned by Ellison in the vicinity of the Spanish ranch and reducing the cost of Barrick's acquisition of the Midas Unit by the value of the lands contributed to the exchange.

WHEREAS, the Proponents have identified certain nonfederal lands that they desire to exchange with the BLM for certain federal lands in the vicinity of the Spanish Ranch that will achieve the Proponents' objectives for the land exchange provided for in the Midas Unit acquisition agreement.

WHEREAS, the proposed exchange would consolidate and benefit the BLM's management of federal lands in the Squaw Valley and Spanish Ranch Grazing Allotments.

WHEREAS, the Proponents hereby certify that they have legal ownership or control of the nonfederal lands described on Exhibit A attached hereto ("the Nonfederal Lands") and will provide clear title to such lands.

WHEREAS, the above identified parties desire to express their intent to accomplish an exchange of certain lands and to establish certain terms and conditions for the exchange, and do therefore agree as follows:

A. Description of Lands or Interest in Lands Being Considered for Exchange. Subject to the terms and conditions set forth below, the Proponents agrees to convey to BLM certain Nonfederal Lands, as described on Exhibit "A", subject only to the reservations and exceptions agreeable to BLM, and BLM agrees to convey to the Proponents the federal lands (the "Federal Lands") as described in the attached Exhibit "B". Reservations and exceptions to Exhibit "B" will be determined during the review of the exchange proposal. Such conveyances shall include all of the parties interest in the lands, including but not limited to the mineral, timber, easements, grazing use, and other occupancy interests, except for those interests specifically reserved and shown on Exhibits "A" and "B". It is understood that a three percent (3%) royalty on the gross value of mineral products will be reserved to Ellison Minerals, Inc. on the nonfederal lands. It is further understood that a similar royalty would be reserved to the United States on those Federal lands of like geologic structure.

It is understood that the actual exchange will be based on value. The lands described in Exhibits "A" and "B" may need to be modified to equalize the values in accordance with federal regulations.

B. Exchange Processing Steps. In processing the exchange the following steps will be accomplished by the party indicated at its own expense, without compensation except as indicated:

1. For administrative purposes of this proposed exchange, the Proponents agree that Gordon Peake of Barrick shall serve as the BLM contact in regard to communications, official correspondence, legal services, and other matters related to the exchange. The Proponents further agree to coordinate with each other in an effort to expedite the review and approval by the BLM of this proposed exchange.

2. The Proponents will furnish preliminary title evidence for the Nonfederal Lands within 30 days after the signing of this Agreement. BLM will then inform the Proponents of any unacceptable encumbrances that need to be eliminated or corrections that need to be made.

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 4(b) - Agreement to Initiate an exchange.

3. Upon execution of this Agreement, the BLM will segregate from appropriation under the public land laws and mineral laws the Federal Lands described in the attached Exhibit "B" by a notation on the public land records. BLM will publish a Notice of Exchange proposal in the local newspaper pursuant to 43 CFR 2201.2 within 45 days of the execution of this Agreement.

4. The Proponents and the BLM will consult and coordinate with the Elko County government. The Proponents will make any necessary presentations to the county commissioners at a public meeting to brief the commissioners and request their support.

5. The Proponents will actively pursue obtaining formal water rights on appropriate perennial water sources on the nonfederal lands. It is understood that successful completion of the exchange may depend on an equivalent number of water rights being conveyed to the United States in exchange for those Public Water Reserves that are abandoned on the federal lands prior to conveyance.

6. With funds provided by the Proponents, the BLM shall contract with a real estate appraiser licensed by the State of Nevada acceptable to the BLM and preferably with experience appraising rangeland in Elko County. The appraisal will be completed to BLM Standards and to the Department of Justice "Uniform Appraisal Standards for Federal Land Acquisitions" when appraising the values of the Federal and Nonfederal Lands. The values established shall be as of the same date for the Federal and Nonfederal Lands. If the actual transfer of the land does not occur within 12 months of the date of valuation, the values established shall be reviewed for possible updating.

The parties to the exchange agree to suspend the deadlines for bargaining and arbitration pursuant to 43 CFR 2201.4(a)(1), and to waive any adjustments or compensation for assumption of costs pursuant to 43 CFR 2201.1-3.

7. The Proponents will be responsible for all studies that may be required for the Nonfederal and Federal Lands in preparation of the environmental analysis as required by the National Environmental Policy Act (NEPA). This may include, but is not necessarily limited to, threatened and endangered species inventory and evaluation, archeological inventory and evaluation (cultural and Paleontological report). The Proponents will also be responsible for preparation of the NEPA environmental analysis, with the understanding that BLM will have control over the preparation of the document and review of internal and external public comments submitted on behalf of the document. Such analyses and reports shall be prepared in accordance with BLM standards and subject to approval by the BLM. Funding for such analyses and reports shall be provided by the Proponents.

8. BLM will prepare, at Proponents' expense, the mineral potential report of the Federal lands and nonfederal lands involved in the exchange. The Proponents will provide any supplemental mineral information and reports necessary for an accurate evaluation of the information on the known and inferred mineral deposits and reserves of the land.

9. The Proponents will furnish a Level I hazardous substances clearance report for the Nonfederal and Federal Lands. The report must be accepted by BLM.

10. Equalization of land values will be accomplished pursuant to the regulations contained in 43 CFR 2201.6.

11. If as a result of the NEPA environmental analysis and resource studies it is determined that the exchange is compatible with BLM policies and programs, is in compliance with the exchange regulations, and is in the public interest, BLM will publish a Notice of Decision in the local newspaper when a decision has been made approving the exchange.

C. Hazardous Substances. Each party to this Agreement hereby declares that to the best of its knowledge there has been no actual or suspected release, storage, or disposal of hazardous substances on the Federal or Nonfederal Lands involved in the exchange. BLM will take whatever steps are necessary to determine if hazardous substances are present on the Federal Lands and the Proponents shall take whatever steps are necessary to determine if hazardous substances are present on the Nonfederal Lands involved in the exchange. If hazardous substances are determined to exist on either the Federal or Nonfederal Lands involved in the exchange, the Proponents may choose to either: (a) conduct further investigation and, if necessary, remediation; (b) remove the lands so affected from the exchange; or (c) terminate the exchange.

D. Right to Enter. The parties to this Agreement hereby grant permission to each other to enter and physically examine the lands of each party. Such examination shall be nonimpairing to the environment, and prior notification will be given to the other party in each instance.

E. Relocation and Use Termination. Pursuant to 49 CFR 24.101, this Agreement serves as formal notice to the Proponents of the voluntary nature of this exchange and that the non-Federal lands are being acquired by the United States on a voluntary basis. Relocation benefits will not be paid and are not applicable to the Proponents of this exchange.

The parties to this Agreement shall immediately notify all lessees or other authorized users of the Nonfederal and

**H-2200-1 LAND EXCHANGE HANDBOOK**

**Illustration 4(b) - Agreement to Initiate an exchange.**

Federal Lands of the pending land exchange and provide any termination notices necessary to such lessees or other authorized users.

F. Exchange Closing. The exchange will be closed once all clearances, reports, the environmental assessment, appraisals, etc. have been completed. The closing will be handled as follows:

Pursuant to 43 CFR 2201.9, title to the Federal and Nonfederal Lands will be transferred simultaneously through escrow procedures. Escrow instructions will be prepared and delivered to the Stewart Title Company in Reno, Nevada prior to closing. Except as otherwise provided in this Agreement, all escrow costs will be paid by the Proponents.

At or prior to closing the Proponents will deposit in escrow: (a) Warranty Deed conveying the Nonfederal Lands to the United States and its assigns pursuant to 43 CFR 2201.8(b)(1) subject to those reservations and exceptions permitted in the preliminary title opinion and; (b) a policy of title insurance (ALTA U.S. Policy 9/28/91 Form) or an endorsement to a previously furnished policy, in an amount equal to the appraised value of the Nonfederal Lands, showing title vested in the United States, pursuant to 43 CFR 2201.8(a) and 2201.8(c).

If required, any necessary equalization payment, as provided for in 43 CFR 2201.6, and property tax payment will be deposited into escrow.

At or prior to closing BLM will deposit in escrow the patent to the Federal Land which will contain only those reservations and exceptions shown in Exhibit "B".

G. Amendment of Agreement. This Agreement to Initiate a Land Exchange may be amended in writing at any time upon mutual agreement by all the parties to the exchange. In particular, the parties recognize that this exchange may be more efficiently accomplished as an assembled land exchange pursuant to 43 C.F.R. 2201.1-1, and if such a determination is made, the parties agree to amend this Agreement accordingly.

H. Non-binding Nature of Agreement. This Agreement does not legally bind the parties to proceed with processing or to consummate the proposed exchange, or to reimburse or pay damages to any party to this proposed exchange, or anyone doing business with any such party.

Where factors controlled by both parties are diligently and timely addressed, this Agreement shall be continued. However, where due diligence is not or cannot be pursued by either party, termination of the Agreement can be initiated with 30 day notice in writing to the other party.

This Agreement and the consummation of this proposed exchange is subject to the provisions of 43 CFR Part 4, the Department of the Interior Hearings and Appeals Procedures, and in the event of a protest or appeal, is contingent upon final disposition of that protest or appeal.

IN WITNESS WHEREOF, the parties have executed this Agreement in duplicate as of the last date below:

ELLISON RANCHES, INC.

\_\_\_\_\_

Title

Date: \_\_\_\_\_

BARRICK GOLDSTRIKE MINES, INC.

\_\_\_\_\_

Title

Date: \_\_\_\_\_

Helen Hankins, District Manager, Elko District

\_\_\_\_\_

Date: \_\_\_\_\_

## H-2200-1 LAND EXCHANGE HANDBOOK

Illustration 4(b) - Agreement to Initiate an exchange.

### EXHIBIT A

(Nonfederal LANDS TO BE ATTACHED)

### EXHIBIT B

(Federal LANDS TO BE ATTACHED)

### EXHIBIT C

#### Proposed Schedule

<u>Task</u>	<u>Date</u>	<u>Party Responsible</u>
Feasibility Analysis	11/96	BLM
Agreement to Initiate Exchange	11/96	BLM
Segregation of Federal Lands	11/96	BLM
Notification in Newspaper	12/96	BLM
Preliminary Title Review	12/96	Proponents
HazMat Survey Completed	3/97	Proponents
HazMat Report Reviewed and Approved	4/97	BLM
Biological/T&E Reports Completed	4/97	Proponents
Biological/T&E Reports Approved	5/97	BLM
Cultural Report Completed	5/97	Proponents
Cultural Report Approved	6/97	BLM
Mineral Report Completed	6/97	BLM
Mineral Report Approved	7/97	BLM
Environmental Assessment Completed	7/97	Proponents
Environmental Assessment Approved	9/97	BLM
Final Title Review/Opinion	9/97	BLM
Newspaper Publication of Decision Notice	10/97	BLM
Final Processing	11/97	BLM
Accept Title and Issue Patents	12/97	BLM

**H-2200-1 LAND EXCHANGE HANDBOOK**

Illustration 4(c) - Agreement to Initiate an exchange.

UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
Serial # \_\_\_\_\_

AGREEMENT TO INITIATE  
A LAND EXCHANGE

THIS AGREEMENT TO INITIATE AN EXCHANGE is made this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_\_\_, pursuant to Section 206 of the Act of October 21, 1976, as amended, 43 U.S.C. 1716, between the BUREAU OF LAND MANAGEMENT on behalf of the UNITED STATES OF AMERICA, hereinafter called BLM, and \_\_\_\_\_, hereinafter called the Proponent.

**WHEREAS**, the Proponent(s) hereby certify that they have legal ownership or control of the non-Federal lands and have the ability to provide title to such lands.

**WHEREAS**, the Proponent(s) hereby certify that they are citizens of the United States or are a corporation or other legal entity subject to the laws of the United States or a State thereof.

**WHEREAS**, the above identified parties desire to express their intent to accomplish an exchange of certain lands and to establish certain terms and conditions for the exchange, do therefore agree as follows:

**(1) DESCRIPTION OF LANDS OR INTEREST IN LANDS BEING CONSIDERED FOR EXCHANGE**

The Proponent agrees to convey to BLM the non-Federal lands as described in attached "Exhibit A," subject only to the reservations and exceptions shown thereon, and BLM agrees to convey to the Proponent the Federal lands as described in the attached "Exhibit B," subject only to the reservations and exceptions shown thereon. Such conveyances must include all of the parties interest in the lands, including but not limited to the minerals, timber, grazing use, water, and all other interests, except for those interests specifically reserved and shown on "Exhibits A and B."

**(2) EXCHANGE PROCESSING STEPS.**

Each party will provide the other with survey plats, maps, aerial photographs, survey corner information, etc. as appropriate, to aid in the identification of the lands to be exchanged.

Preliminary title evidence will be furnished for the non-Federal lands by the Proponent within (days) from execution of this agreement.

The (BLM) will arrange for an appraisal of the non-Federal and Federal lands within (days) from the execution of this agreement. The appraisal will be done in accordance with BLM standards as prescribed in 43 CFR 2201.3 and will be subject to BLM review and approval.

Illustration 4(c) - Agreement to Initiate an exchange.

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 5 (a) - Notice of Exchange Proposal

#### Notice of Exchange Proposal

#### Proposed Exchange of Lands in Ocean County, Oregon

OR- 54321

UNITED STATES DEPARTMENT OF THE INTERIOR  
Bureau of Land Management  
Coast Resource Area  
P.O. Box 123  
Orca Bay, Oregon 99999.

Notice is hereby given that the Bureau of Land Management is considering a proposal to exchange land pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The exchange has been proposed by the Owl Timber Company, P.O. Box 321, Orca Bay, Oregon 99999.

The following described federal land is being considered for disposal by the United States: (Land description - Federal land)

In exchange the United States would acquire the following described land from the Owl Timber Company: (Land description - non-Federal land)

Subject to valid existing rights, the federal land identified above has been segregated from appropriation under the public land laws and mineral laws for a period of 5 years beginning August 15, 1992.

More detailed information concerning the proposed exchange may be obtained from John Smith, Realty Specialist, Coast Resource Area, P.O. Box 123, Orca Bay, Oregon 99999, (503) 321-8765.

Interested parties may submit comments concerning the proposed exchange to the Area Manager, Coast Resource Area, at the above address. In order to be considered in the environmental analysis of the proposed exchange, comments must be in writing to the Area Manager and be postmarked or delivered by (date 45 days after initial publication).

Dated: Thomas CEDE, Area Manager

**H-2200-1 LAND EXCHANGE HANDBOOK**

**Illustration 5 (b) - Notice of Exchange Proposal**

**Notice of Exchange Proposal**

**Proposed Exchange of Lands in Elko County, Nevada**

N-60262

UNITED STATES DEPARTMENT OF THE INTERIOR, Bureau of Land Management, Elko District, 3800 E. Idaho St., Elko, Nevada 89801.

Notice is hereby given that the Bureau of Land Management is considering a proposal to exchange land pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended. The exchange has been proposed by BSR Associates.

BSR Associates has proposed to exchange to the United States the following described nonfederal land or interest in land:

Legal Description for approximately 69,572.97 acres.

In exchange, the United States would transfer title to an acreage of equal value, as determined by appraisal and in accordance with the procedures found in 43 CFR 2201.6, from the following described pool of federal land:

Legal Description for approximately 8,630.96 acres.

Subject to valid existing rights, the federal land identified above has been segregated from appropriation under the public land laws and mineral laws.

In accordance with 43 CFR 4110.4-2(b), this Notice of Exchange Proposal constitutes 2 years' prior notification to grazing permittees affected by this action. Completion of the exchange may result in adjustments to the permitted use on federal lands within the following grazing allotments:

Leppy Hills;  
UT/NV #1 North;  
Pilot;  
East Big Springs;  
West Big Springs.

More detailed information concerning the proposed exchange may be obtained from Robert Marchio, Bureau of Land Management, Elko District, 3900 E. Idaho St., Elko, Nevada 89801, (702) 753-0200.

Interested parties may submit comments concerning the proposed exchange including notification of any liens, encumbrances, or other claims relating to the lands being considered for exchange to the District Manager, Elko District, at the above address. In order to be considered in the environmental analysis of the proposed exchange, comments must be in writing to the District Manager and postmarked or delivered within 45 days of initial publication of this notice.

Dated:

HELEN HANKINS  
District Manager



## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 6 (a) - Notice of Decision

#### NOTICE OF DECISION

#### EXCHANGE OF LANDS IN LINCOLN AND TILLAMOOK COUNTIES, OREGON

OR-51234

UNITED STATES DEPARTMENT OF THE INTERIOR, Bureau of Land Management, Salem District Office,  
Tillamook Resource Area, P.O. Box 404 (4610 Third Street), Tillamook, Oregon 97141.

Notice is hereby given that on March 13, 1996, Dana Shuford, Tillamook Area Manager, Bureau of Land Management, issued a decision to approve a proposed land exchange with the Simpson Timber Company, a Washington corporation, P.O. Box 190, Tillamook, Oregon 97141. A copy of the decision to approve the exchange and other information concerning the exchange may be obtained from the Tillamook Area Manager at the above address or from the Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306.

The following described federal land has been determined to be suitable for transfer out of Federal ownership by exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716), as amended:

Willamette Meridian, Oregon

<u>Parcel No.</u>	<u>Tsp.</u>	<u>Rng.</u>	<u>Sec.</u>	<u>Subdivision</u>	<u>Acreage</u>
S-1	2 S.	8 W.	5	lot 5	37.01
S-2	2 S.	9 W.	34	SE $\frac{1}{4}$ NW $\frac{1}{4}$ , NE $\frac{1}{4}$ SW $\frac{1}{4}$	80
S-3	3 S.	8 W.	19	lots 9, 10, 11, W $\frac{1}{2}$ SE $\frac{1}{4}$	167.61

In exchange the United States will acquire the following described land from Simpson Timber Company:

Willamette Meridian, Oregon

<u>Parcel No.</u>	<u>Tsp.</u>	<u>Rng.</u>	<u>Sec.</u>	<u>Subdivision</u>	<u>Acreage</u>
O-1	1 S.	9 W.	12	lots 1,2,3, W $\frac{1}{2}$ NE $\frac{1}{4}$	201.24
O-2	1 S.	9 W.	13	NW $\frac{1}{4}$ NW $\frac{1}{4}$	40

The land to be acquired by the United States is located along the Little North Fork Wilson River, a perennial stream that possesses outstanding aquatic habitat for several anadromous and resident fish species. The land also contains important habitat for bald eagle, northern spotted owl, and marbled murrelet. The Federal land being conveyed is made up of small, isolated parcels which are difficult and uneconomical to manage. The public interest will be served by making the exchange.

For a period of 45 days from the date of publication of this notice, interested parties may submit written comments or objections to the Area Manager, Tillamook Resource Area at the above address.

Dated:

\_\_\_\_\_  
Dana Shuford, Tillamook Area Manager

## H-2200-1 LAND EXCHANGE HANDBOOK

Illustration 6 (b)

Combined Notice of Decision and Notice of Plan Amendment formatted for  
Federal Register

4310-CG

Department of The Interior  
Bureau of Land Management

(I-00001, I-000002, I-000003)

AGENCY: Bureau of Land Management

ACTION: Notice of Plan Amendment and Notice of Decision for Land Exchange

SUMMARY: The Bureau of Land Management (BLM) is amending the High Plains RMP to allow transfer of certain Federal lands in exchange for privately owned lands in Whatever County, Idaho. BLM examined the following described federal lands and through the land use planning process determined them suitable for transfer by land exchange pursuant to Section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716).

Federal lands determined suitable for land exchange are described as:

T. 1 N., R.2 E., B.M.  
Sections: 1,2,3,10, and 12: all  
Comprising 3,840.0 Acres

Nonfederal land to be acquired are described as:

T. 1 N. R. 1 W., B.M.  
Sections: 28, 29, 30, 31, 32, and 33: W ½  
Comprising 3,520.0 Acres

The purpose of this exchange is to acquire the non-Federal lands which have high public values for wildlife habitat and recreation. The exchange will result in acquisition Desert Bighorn Sheep lambing grounds and will increase public access to deep lake by adding 1.75 miles of shoreline.

The values of the lands to be exchanged are approximately equal; full equalization of values will be achieved by payment to the United States by Mr. I. M. Landowner of funds in an amount not to exceed 25 percent of the total value of the lands to be transferred out of federal ownership.

Lands transferred from the United States will be subject to the following reservations, terms, and conditions: ditches and canals, oil and gas to U.S., road right-of-way I-00004 to Any County, Idaho.

FOR FURTHER INFORMATION CONTACT: Field Office Manager, Bureau of Land Management, P.O. Box 1000, Any City, Idaho. (208) 342-9999

SUPPLEMENTARY INFORMATION: Planning Protest - Any party that participated in the plan amendment and is adversely affected by the amendment may protest this action only as it affects issues submitted for the record during the planning process. The protest must be in writing and filed with the Director Bureau of Land Management, 1800 "C" Street, N.W., Washington, D.C. 20240, within 30 days of this notice.

Land Exchange Comments: For a period of 45 days from the date of publication of this notice in the Federal Register, interested parties may submit comments or protest regarding the land exchange to the Field Office Manager, Bureau of Land Management, P.O. Box 1000, Any City, Idaho. Objections will be reviewed by the State Director who may sustain, vacate, or modify this Notice of Decision.

In the absence of any planning protest or objections regarding the land exchange, the decision will become the final determination of the Department of the Interior and the Planning amendment will be in effect.

Dated: March 25, 1997

M. N. Charge  
Field Office Manager

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 7 - Binding Land Exchange Agreement

#### LAND EXCHANGE AGREEMENT

THIS LAND EXCHANGE AGREEMENT is made this numerical day of month of the year, 19\_\_, pursuant to Section 206 of the Act of October 21, 1976 (90 Stat. 2756) between the UNITED STATES OF AMERICA, acting through the authorized officer of the Bureau of Land Management, hereinafter styled the "BLM", and Full corporate name or legal name of the private individual, hereinafter called the Proponent.

1. In consideration of the mutual agreements contained herein, the parties agree as follows:
2. Title to the Non-Federal and Federal lands will be transferred simultaneously through escrow procedures with example (Sterling Title Company of New Mexico in Grants, New Mexico).
3. The Proponent will convey to the United States of American by general warranty deed free of lien or encumbrance, except as otherwise provided herein, the real estate and all interest therein, situated in the County of Cibola, State of New Mexico, as described in Exhibit A consisting of X pages attached hereto and made a part hereof **(and in addition thereto pay to the United States of American the sum of \_\_\_\_\_ dollars \$ \_\_\_\_\_) in the event the exchange is not balanced.** In exchange therefor the United States of America agrees to convey to the Landowner, by patent issued by the Department of the Interior, the real property and all interest therein, except as otherwise provided herein, described in Schedule "B" consisting of X pages attached hereto and made a part hereof **(and in addition thereto pay to the Landowner the sum of \_\_\_\_\_ dollars \$ \_\_\_\_\_).**
4. The values established as a result of the appraisal will be fixed at the agreed upon values of the involved lands until consummation of the land exchange.

This Agreement is legally binding on both the Proponent and the BLM subject to the terms and conditions herein identified and provided acceptable title can be conveyed to the United States of America, and that no loss or damage occurs to either property from any cause, and no undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance. Further, this Agreement is binding if a decision to approve an exchange is upheld in the event of a protest or appeal.

The parties agree that the Proponent will be responsible for removal, indemnification, or other remedial actions concerning any hazardous substances found on the involved non-Federal lands.

This Agreement is binding unless both parties agree through mutual consent to terminate agreement. In the event of failure to perform or comply with terms set forth in this Agreement, the noncomplying party will be liable for all costs borne by the other party as a result of the Agreement to Initiate an Exchange.  
IN WITNESS WHEREOF, the parties hereto have signed their names.

THE UNITED STATES OF AMERICA  
Bureau of Land Management  
Department of the Interior

Exchange Proponent



Illustration 8 - Sample Patent

OR 53274-F2

WHEREAS

**WILLIAM SMITH PROPERTIES, INC.,  
AN OREGON CORPORATION**

is entitled to a Land Patent pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described lands:

Willamette Meridian, Crook County, Oregon

T. 14 S., R. 17 E.,  
sec. 26, NW $\frac{1}{4}$ SE $\frac{1}{4}$ .

T. 18 S., R. 20 E.,  
sec. 15, NW $\frac{1}{4}$ .

Willamette Meridian, Wasco County, Oregon

T. 7 S., R. 15 E.,  
sec. 31, lot 1;  
sec. 32, NW $\frac{1}{4}$ SE $\frac{1}{4}$ .

T. 6 S., R. 16 E.,  
sec. 28, NE $\frac{1}{4}$ NE $\frac{1}{4}$ .

Willamette Meridian, Gilliam County, Oregon

T. 6 S., R. 19 E.,  
sec. 3, NE $\frac{1}{4}$ SW $\frac{1}{4}$  and S $\frac{1}{2}$ SE $\frac{1}{4}$   
sec. 4, SW $\frac{1}{4}$ SE $\frac{1}{4}$ .

Aggregating 472.23 acres.

NOW KNOW YE, that there is, therefore, granted by the UNITED STATES unto the said **WILLIAM SMITH PROPERTIES, INC.**, the lands above described; TO HAVE AND TO HOLD the said lands with all the rights, privileges, immunities, and appurtenances, of whatsoever nature, thereunto belonging, unto the said **WILLIAM SMITH PROPERTIES, INC.**, its successors and assigns forever; and

EXCEPTING AND RESERVING TO THE UNITED STATES a right-of-way thereon for ditches or canals constructed by the authority of the United States. Act of August 30, 1890 (43 U.S.C. 945); and

SUBJECT TO:

1. Those rights for a power line, 20 feet in width, granted to Wasco Electric Cooperative, Inc., its successors or assigns, by right-of-way No. OR 3471, pursuant to the Act of March 4, 1911, as amended (43 U.S.C. 961), as to the NE $\frac{1}{4}$ NE $\frac{1}{4}$ , sec. 28, T. 6 S., R. 16 E., W.M.; and
2. Those rights for a power line, variable feet in width, granted to Wasco Electric Cooperative, Inc., its successors or assigns, by right-of-way No. OR 35342, pursuant to Title V of the Act of October 21, 1976, (43 U.S.C. 1761-1771), as to the NW $\frac{1}{4}$ SE $\frac{1}{4}$ , sec. 32, T. 7 S., R. 15 E., W.M. OR 53274-F2

Illustration 8 - Sample Patent

**H-2200-1 LAND EXCHANGE HANDBOOK**

**Illustration 9 - BLM Quitclaim Deed**

OR 50498  
UNITED STATES DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT  
QUITCLAIM DEED

The United States of America, acting through the Department of the Interior, Bureau of Land Management, Grantor; does hereby release and quitclaim to SHELTON-TURNBULL PRINTERS, INC., an Oregon corporation, Grantee, pursuant to Sec. 206 of the Act of October 21, 1976, as amended (43 U.S.C. 1716), all right, title, and interest which the Grantor may have by reason of the Warranty Deed, dated November 3, 1992 and recorded November 13, 1992, Reception No. 9264402, Official Records of Lane County, Oregon, in and to the following described real property, situated in the City of Eugene, Lane County, Oregon to-wit:

A parcel of land lying in the Northwest Quarter of the Northwest Quarter of Section 35, Township 17 South, Range 4 West of the Willamette Meridian, said parcel being described as follows:

Beginning at the Initial Point of Seneca Industrial Park as plated and recorded in File 73, Slide 420, Lane county Oregon Plat Records, and run thence along the West line of said Seneca Industrial Park North 0E32'26" East, 516.19 feet to the Northwest corner of Lot 6, Block 2 of said plat; thence leaving said West line run parallel with the North margin of West 7th Avenue North 89E18' West, 200.00 feet; thence parallel with the West line of said Seneca Industrial Park south 0E32'26" West, 516.19 feet to the North margin of said West 7th Avenue; thence along said North margin South 89E18' East, 200.00 feet to the Point of Beginning, in Eugene, Lane County, Oregon.

Containing 2.37 acres.

TO HAVE AND TO HOLD the same unto said grantee and its assigns forever.

SUBJECT TO an easement in favor of the City of Eugene for a drainage ditch, created by instrument, including the terms and provisions thereof, dated October 1, 1954, recorded October 14, 1954, Reel 46, Reception No. 40402, Official Lane County Records.

The true consideration for this conveyance is the exchange of other real property, which is the whole consideration.

This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. Before signing or accepting this instrument, the person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses and to determine any limits on lawsuits against farming or forest practices as defined in ORS 30.930.

Dated this fifteenth day of December, 1994.

UNITED STATES OF AMERICA  
DEPARTMENT OF THE INTERIOR  
BUREAU OF LAND MANAGEMENT

By: \_\_\_\_\_  
Acting Chief, Branch of Lands  
and Minerals Operations

**H-2200-1 LAND EXCHANGE HANDBOOK**

Illustration 9 - BLM Quitclaim Deed

ACKNOWLEDGEMENT

STATE OF OREGON            )  
                                  )SS:  
COUNTY OF MULTNOMAH )

On this 15th day of December, 1994, before me personally appeared William E. Bliesner, who is personally known to me to be the Acting Chief, Branch of Lands and Minerals Operations, Oregon State Office, Bureau of Land Management, and the he executed the foregoing instrument by the authority of and in behalf of the United States of America; and he acknowledged said instrument to be the act and deed of the United States of America.

\_\_\_\_\_  
Notary Public in and for the State of Oregon  
My commission expires: \_\_\_\_\_







## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 11 - Warranty Deed

OR48500P8

#### UNITED STATES DEPARTMENT OF THE INTERIOR

#### BUREAU OF LAND MANAGEMENT

#### Warranty Deed

For and in consideration of the exchange of certain land and interests as authorized by the Federal Land Policy and Management Act of 1976, (43 U.S.C. 1701 *et seq.*), **Oregon State University Foundation, an Oregon Nonprofit Corporation**, hereinafter called the grantor, hereby grant and convey to the United States of America and its assigns, grantee, the following described real property, with the tenements, hereditaments and appurtenances thereunto belonging or appertaining, situated in the County of Baker, State of Oregon, to wit:

Willamette Meridian, Oregon

- T. 11S., R. 39E.,  
Section 30, W $\frac{1}{2}$ SE $\frac{1}{4}$ ;  
Section 31, N $\frac{1}{2}$ NE $\frac{1}{4}$ .
- T. 11S., R. 40E.,  
Section 14, NW $\frac{1}{4}$ NE $\frac{1}{4}$ , N $\frac{1}{2}$ SW $\frac{1}{4}$ NE $\frac{1}{4}$ .
- T. 11S., R. 41E.,  
Section 7, E $\frac{1}{2}$ NE $\frac{1}{4}$ ;  
Section 8, W $\frac{1}{2}$ SW $\frac{1}{4}$ , SE $\frac{1}{4}$ SW $\frac{1}{4}$ .
- T. 12S., R. 41E.,  
Section 5, lot 4.

The parcel of land to the which the above description applies contains 443.18 acres more or less.

To Have and To Hold said real property to the United States of America and its assigns, forever.

Said property SUBJECT TO:

1. An easement conveyed to California-Pacific Utilities Company as shown by instrument recorded July 24, 1957 in Book 167, Page 196.
2. An easement conveyed to the United States as shown by instruments recorded April 15, 1969, in Deed 69 15 021.

The grantor hereby covenants to and with the United States and its assigns, that the grantor is lawfully seized in fee simple of the above granted real property, has a good and lawful right and power to sell and convey the same, that the same is free and clear of all encumbrances, except as shown above, and that the grantor will forever warrant and defend the title thereto and the quiet possession thereof against the lawful claims and demands of all persons whomsoever.

The actual consideration for this transfer is the exchange of other real property, which is the whole consideration.

This instrument will not allow use of the property described in this instrument in violation of applicable land use laws and regulations. The person acquiring fee title to the property should check with the appropriate city or county planning department to verify approved uses and to determine any limits on lawsuits against farming or forest practices as defined in ORS 30.930.

The acquiring federal agency is the Bureau of Land Management, U.S. Department of the Interior.

Dated this \_\_\_\_ day of \_\_\_\_\_, 19\_\_.

H-2200-1 LAND EXCHANGE HANDBOOK

Illustration 11 - Warranty Deed

Oregon State University Foundation,  
an Oregon Nonprofit Corporation

by: \_\_\_\_\_

CORPORATE ACKNOWLEDGEMENT

STATE OF \_\_\_\_\_ )  
COUNTY OF \_\_\_\_\_ ) ss:

On the \_\_\_\_ day of \_\_\_\_\_, 1996, personally appeared before me, \_\_\_\_\_  
\_\_\_\_\_, whose identity is proven to me on the basis of satisfactory  
evidence and who by me duly sworn did say that he (she) is the \_\_\_\_\_  
\_\_\_\_\_ of the **Oregon State University Foundation, an Oregon Nonprofit Corporation**, and that said  
document was signed by him (her) in behalf of said corporation by authority of its bylaws (or of a Resolution of its  
Board of Directors), and acknowledged to me that said corporation executed the same.

[Seal]

\_\_\_\_\_  
Notary Public in and for the  
State of Oregon  
My commission expires: \_\_\_\_\_

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 12 - Request for final opinion of title from Solicitor

2201(958.1)  
OR 48500P1

#### Memorandum

To: Office of the Regional Solicitor, Pacific Northwest Region  
From: Chief, Branch of Realty and Records Services  
Subject: Request for Final Opinion of Title, Clearwater I Exchange - Boise Cascade (Wallowa County Parcel) - OR 48500P1

A final title opinion is requested on land affected by the subject exchange. The attached file contains the final opinion of title, two copies of the policy of title insurance, a copy of your preliminary opinion of title, the grantor's hazardous materials statement, two copies of the recorded warranty deed to the United States, the certificate of inspection and possession, a copy of the assembled exchange agreement and escrow instructions, and a summary of the appraisal review.

The following are our comments on items listed as exceptions in the preliminary title policy number USO-9924-2002, supplemental update no. 1 of September 20, 1993 and in the preliminary opinion of title dated June 9, 1994:

Item 1 - This item pertains to 1993-1994 property taxes. This has been deleted in the title insurance policy dated August 8, 1994.

Items 2 and 3 - These items concerning easements to third parties are administratively acceptable and were waived in the preliminary opinion.

Item 4 - This item concerns public and governmental rights to the portions of the land below the ordinary high water of the Grande Ronde River. This is administratively acceptable and was waived in the preliminary opinion.

Items 5 and 6 - These items concern farm use classification and financing statements and have been deleted in the title insurance policy.

The note concerning finding of no judgements or IRS liens against the vendor is administratively acceptable.

A new item 1 has been added in the title insurance policy. This item concerns an easement for road purposes reserved to the grantor in the deed to the United States. This item is administratively acceptable and we request that it be waived.

Please review these documents and, if acceptable, approve and return the final opinion of title. If you have any questions, please call me at 952-6157.

William E. Bliesner  
Land Law Examiner

Attachments (as stated)

**H-2200-1 LAND EXCHANGE HANDBOOK**

Illustration 12 - Request for final opinion of title from Solicitor

**H-2200-1 LAND EXCHANGE HANDBOOK**

**Illustration 13 - Final Opinion of Title**

Form (3)

Refer to:  
BLM.PN.0270

**Memorandum**

To: Oregon State Director, BLM  
Chief, Branch of Realty and Records Services (958)

From: Office of the Regional Solicitor, Pacific Northwest Region

Subject: Final Opinion of Title

Re: Tract No. PX OR 48500P1  
County: Wallowa State: Oregon  
Estate to be Acquired: Fee Simple  
Consideration: Exchange of Land Acreage: 1,840 acres  
Vendor: Boise Cascade Corporation, a Delaware corporation  
Deed Dated: August 5, 1994 Filed: August 5, 1994  
Recorded: Document No. 94-26929, Wallowa County Records  
Title Evidence No: Policy Number USO-9924-2022  
Prepared by: Citizens Title and Escrow Services, agent for Stewart Title Guaranty Company.

An examination has been made of the title data relating to the above tract of land in which interests have been acquired under the authority of existing legislation. The land and estate acquired by the United States are more particularly described in the enclosed deed.

The attached title evidence and accompanying data disclose valid title to be vested in the United States of America subject to the rights and easements noted in Schedule B of the title evidence, and any reservation contained in the deed, which rights, easements and reservations are in compliance with existing statutes, and are such as your agency has advised will not interfere with the proposed use of the land.

Your file is returned herewith.

For the Regional Solicitor

Attorney  
Pacific Northwest Region

Attachment  
Case File

**H-2200-1 LAND EXCHANGE HANDBOOK**

Illustration 13 - Final Opinion of Title



## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 14 - Escrow Instruction Check List

#### Escrow Instruction Check List

All escrow instructions should contain the following information concerning the closing:

Introductory paragraph identifying the parties to the exchange and requesting that the closing process be initiated.

A description of the lands of all parties being exchanged. This may be an attachment.

List of documents to be deposited in escrow by the U.S., including: Executed patent or deed.

List of documents to be deposited in escrow by the non-federal parties, including:

Executed warranty deed to the U.S., subject only to exceptions acceptable to the U.S.

All documents necessary to remove title encumbrances, including mortgage and lien releases, tax payments or deposits, etc.

Equalization payment, if necessary.

Actions to be accomplished by escrow agent in order of action.

Insure all taxes are paid and no mention of unpaid taxes is made in the final title policy.

Record all releases or other documents necessary to eliminate title encumbrances.

Record deeds to non-Federal lands.

Issue policy of title insurance on ALTA U.S. policy form, 1991, in conformance with binder. Policy must be in the amount of **\$(appraised value)** and show title vested in the U.S. free of all encumbrances and describe the exact land described in the recorded deed to the United States.

Record patent or deed to Federal land.

Deliver original recorded non-federal deed and title insurance policy to the BLM address given below.

Deliver the original recorded Federal land patent or deed to patentee at address below and provide a copy to the BLM at the address below.

Disburse equalization payment to the appropriate party.

Show party to be billed for escrow services.

Closing paragraph concerning a time limit for closing and amendments to the instructions.

Signatures of all parties and dates.

**H-2200-1 LAND EXCHANGE HANDBOOK**

Illustration 14 - Escrow Instruction Check List

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 15 - Escrow Instructions

#### Escrow Instructions Clearwater Land Exchange - Phase I OR 48500

The following instructions are prepared for use in completing the exchange of real property between the Bureau of Land Management on behalf of the United States of America (BLM) and Clearwater Land Exchange - Oregon, an Idaho partnership (Clearwater). An Agreement to Initiate an Assemble Land Exchange was entered into by BLM and Clearwater on April 25, 1995. Title to the subject lands will be transferred simultaneously using the following described escrow closing procedures to be conducted by Citizens Title and Escrow Service, Inc., of Enterprise, Oregon (Citizens).

Clearwater will deposit the following items with Citizens:

1. Warranty deeds executed by the grantor of each property conveying fee title to the non-federal lands described in attached Exhibit "A" to the United States of America and its assigns, subject only to those encumbrances permitted by the Office of the Regional Solicitor in the preliminary opinions of title to be furnished by BLM.
2. Hazardous substance statements for the non-federal lands executed by each grantor.
3. Evidence necessary to cause the elimination of those items listed in the commitment for title insurance which are identified to be eliminated in the preliminary opinions of title.
4. The sum of \$6,600.00 as a balance in lieu of the equalization payment due to the United States if additional land transactions are not made.

BLM will deposit the following items with Citizens:

1. The preliminary opinions of title issued by the Office of the Regional Solicitor for each of the non-federal properties.
2. Patents for the federal lands listed in attached Exhibit "B" conveying title to those parties identified in the exhibit.

Upon receipt of the above items, Citizens will perform the following services in the order listed below:

1. Conduct procedures necessary to eliminate those items in the commitments for title insurance that are identified to be eliminated in the preliminary opinions of title.
2. Record the Warranty Deeds conveying title to the non-federal land to the United States.
3. Record the patents conveying title to the federal land from the United States.
4. Provide title insurance policies showing that titles to the non-federal lands are vested in the United States of America and its assigns. Policies must be issued on form ALTA U.S. Policy 9/28/1991. The policies must show that the properties are free and clear of all encumbrances except for those waived by the Office of the Regional Solicitor in the Preliminary Opinions of Title. The policies must be issued in the following amounts:

Boise Cascade (Wallowa County)	\$1,133,860
Boise Cascade (Union County)	\$746,140
Boise Cascade (Umatilla County)	\$332,000
R-Y Timber	\$75,400
Roberts	\$28,000

5. Deposit the \$6,600 balance in lieu of equalization payment on behalf of BLM in Citizens Title and Escrow Service, Inc, Trust Account #00075302, Bank of Wallowa County, Joseph, Oregon. This balance is to be

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 15 - Escrow Instructions

used in future phases of this exchange. If the balance is not used to acquire additional property to be conveyed to the United States within three years from the closing date of this transaction, the balance, plus any interest will be paid to the United States.

6. Send the recorded warranty deeds and final policies of title insurance to the Bureau of Land Management, Baker Resource Area, P.O. Box 987, Baker City, Oregon 97814.
7. Send the patents to the respective patentees at the addresses to be provided by Clearwater and a copy to the BLM at the address shown in No. 6 above..

We, the undersigned, approve of these instructions and agree that they will remain in effect until the actions described herein are accomplished and the escrow is closed, or until December 31, 1996, which ever occurs first.

Changes may be made by mutual agreement of the parties. Any changes to these instructions must be in writing and signed by the parties named below,

Bureau of Land Management

Clearwater Land Exchange

By \_\_\_\_\_  
Area Manager

By \_\_\_\_\_  
John Smith, President

\_\_\_\_\_  
Date

\_\_\_\_\_  
Date

## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 16 - Letter to Local Government Officials Notifying of Patent

2200 (958.1)

Honorable John Kitzhaber  
Governor's Office  
254 State Capitol  
Salem, OR 97310-1337

Dear Governor Kitzhaber:

Listed below are conveyances of federal lands issued by this office in exchange for other lands. Copies of the patents or deeds for these conveyances are enclosed.

<u>Serial No.</u>	<u>Name of Grantee</u>	<u>County</u>	<u>Deed/Patent</u>
OR 39279	The Eiguren Family Limited Partnership	Malheur	Patent
OR 44787	Ross E. Butler	Malheur	Patent
OR 48077F1	Willamette Industries, Inc.	Yamhill	Deed
OR 48077F2	Willamette Valley Lumber Company	Lane	Deed
OR 48077F3	Willamette Industries, Inc.	Polk and Lane	Patent
OR 48077F4	Willamette Industries, Inc.	Polk, Linn, and Lane	Deed
OR 48393	Cascade Ranch, L.P.	Jackson	Deed
OR 48393	Bandon Dunes, L.P.	Jackson	Patent
OR 50847	Seneca Jones Timber Company L.P.	Linn	Patent
OR 51890	Caffall Bros. Forest Products, Inc.	Clackamas	Deed

A copy of this letter with enclosures is being sent to the Oregon Division of State Lands and the appropriate Board of Board of County Commissioners.

Sincerely,

Carol L. Sampson  
Deputy State Director  
for Management Services

Enclosures (as stated)

cc: Oregon Division of State Lands  
Board of County Commissioners

Illustration 17 (a) - Ledger Account

## H-2200-1 LAND EXCHANGE HANDBOOK

Illustration 17 (a) - Ledger Account

As of 5/24/96

LEDGER ACCOUNT  
BLM/2LINC. ASSEMBLED EXCHANGE  
AGREEMENT DATED 01/21/1994  
BUREAU OF LAND MANAGEMENT - OREGON STATE OFFICE

Serial No.	Phase	Transaction Name and BLM District	Acres Acquired by BLM	\$ Value Acquired*	Acres Conveyed by BLM	\$ Value Conveyed	Cash Equal Pmts.	Balance () is value due BLM	Patent/De ed #	Closing Date
OR 49268	1	Dunning Ranch Roseburg D.O.	6,581.12	5,184,500	360.00	6,811,500	none	(1,627,000)	QCD 3/22/94	3/25/94
OR 49268P1	2	Spruce Reach Island, Coos Bay D.O.	55.64	880,000	0.00	0	none	(747,000)	none	6/30/94
OR 50419	3	Sandy Exch. Salem D.O.	80.85	407,765	5.00 (timber only)	264,000	none	(603,250)	Patent 3/7/95	3/24/95
OR 50847	4	Rocky Top Salem D.O.	143.00	4,186,555	110.00	4,012,000	none	(428,735)	Patent 8/3/95	8/21/95
OR 51155	5	River Trail Salem D.O.	154.41	379,233	80.00	352,000	none	(401,364)	QCD 5/7/96	5/24/96

Parenthesis() are negative numbers, which indicates that the value balance is in favor of the United States. In accordance with the BLM Regulations in 43 CFR 2201.1-1(e)(1) value balance cannot exceed 25 percent of the total value of the Federal land conveyed in the assembled land exchange up to and including the current transaction. In accordance with 43 CFR 2201.1-1(e)(2) the value must be balanced to zero by a transaction or equalization payment at least every 3 years.

\*Includes value of agreed to compensation for costs incurred by 2Linc. in processing the exchange.

I agree that the balance shown on this ledger account is correct as of this date.

By: \_\_\_\_\_  
Shaun E. Leenders,  
President 2Linc., an Oregon Corporation

Date: \_\_\_\_\_

**BLM MANUAL**

**Supersedes Rel. 2-204**

**Rel. 2-286  
08/14/97**

## H-2200-1 LAND EXCHANGE HANDBOOK

Illustration 17 (b) - Ledger Account

Olympic Group, LLC Assembled Land Exchange N-60731 4/25/97

DATE	SERIAL NO.	Patent NO.	NAME	ACRES ACQ.	VALUE ACQ.	ACRES PAT.	VALUE PAT.	BALANCE	EXCHANGE LIMIT
10/09/96	N-60731-F1	27-97-0001	Federal Phase 1			80.000	\$27,474,618	(\$27,474,618)	
"	N-60731-F2		"			534.630	Incl. in above		
"	N-60731-F3		"			470.000	"		
"	N-60731-F4		"			282.750	"		
			Private Phase 1						
10/09/96	N-60731-P1	Tract 1	Dreyfus-Zepher Cove	11.140	\$24,250,000			\$24,250,000	
	N-60731-P2	Tract 3	"	24.280	Incl in above				
			Compensation for Cost		\$0				
<b>10/09/96</b>			<b>Exchange Subtotal</b>	<b>35.420</b>	<b>\$24,250,000</b>	<b>1,357.380</b>	<b>\$27,474,618</b>	<b>(\$3,224,618)</b>	<b>\$6,868,655</b>
04/25/97	N-60731-F5	27-97-0021	Federal Phase 2			969.540	\$14,364,075	(\$14,364,075)	
04/25/97			Private Phase 2						
	N-60731-P3		Sunrise-LP70A	41.850	\$1,885,000			\$1,885,000	
	N-60731-P4		Sunrise-Williams	40.000	\$760,000			\$760,000	
	N-60731-P5		Sunrise-LP70	35.690	\$715,000			\$715,000	
	N-60731-P6		Dreyfus	11.800	\$13,500,000			\$13,500,000	
	N-60731-P7		Oliver	9.600	\$575,000			\$575,000	
			Compensation for Cost		\$0				
04/25/97			Cash Equalization		\$153,693			\$153,693	
<b>04/25/97</b>			<b>Exchange Total</b>	<b>174.360</b>	<b>\$41,838,693</b>	<b>2,326.920</b>	<b>\$41,838,693</b>	<b>\$0</b>	<b>\$10,459,673</b>
				As of 04/25/97, FLPMA Exchange Limit (25% of Value patented) equals .....\$10,459,673					



## H-2200-1 LAND EXCHANGE HANDBOOK

### Illustration 18- Patent Decision involving an Assembled Land Exchange and Ledger.

CACA 26811  
2200

CERTIFIED MAIL--RETURN RECEIPT REQUESTED

#### DECISION

The Nature Conservancy	:	
Western Regional Office	:	FLPMA Land Exchange CACA 26811
Attn: Jennifer Johnson	:	Portion of Dos Palmas land exchange
785 Market Street	:	(Marapese property)
San Francisco, Ca 94103	:	

#### Title to Non-Federal Land Accepted

Title to the land offered in exchange by The Nature Conservancy (TNC), a District of Columbia nonprofit corporation, is satisfactory to the United States, and the requirements of Sec. 206 of the Act of October 21, 1976 (43 U.S.C. 1716), and the regulations thereunder have been met. The grant deed from TNC to the United States was executed on December 18, 1990, and recorded on December 27, 1990, under document No. 466125, official records of Riverside County, California. There are no protests appearing in the record; therefore, title is hereby accepted to the non-Federal land described in the subject grant deed, which aggregates 1,221.80 acres of land situate in Riverside County:

For a description of the land see Exhibit A attached hereto and made a part hereof.

The appraised value of the non-Federal land is \$1,897,000. The record shows that prior to the United States accepting title to the above-described land, TNC owed the United States \$394,377 of land value. At the close of the Dos Palmas-Marapese Property transaction the United States owes TNC \$1,502,623 of land value.

In exchange for the lands described in Exhibit A, the United States will convey federal lands to TNC at a later date.

Value differences between the non-Federal and Federal land are being equalized in accordance with the procedures set forth in the Statewide Cooperative Land Exchange Pooling Agreement, and for the Salt Creek/Dos Palmas Agreement dated December 21, 1989.

Nancy J. Alex  
Chief, Lands Section

## **H-2200-1 LAND EXCHANGE HANDBOOK**

# APPENDIX

## **H-2200-1 LAND EXCHANGE HANDBOOK**

## H-2200-1 LAND EXCHANGE HANDBOOK

### Appendix 1 - Grazing Notification Policy

#### Notice Required Prior to Cancellation of a Grazing Permit/Lease

The BLM policy regarding cancellation of Grazing permits or leases is found at 43 CFR 4110.4-2(b). These regulations state, in part, "When federal lands are disposed of or devoted to a public purpose which precludes livestock grazing, the permittees and lessees must be given 2 years prior notification . . . before their grazing permit or grazing lease and grazing preference may be canceled . . . (a) permittee or lessee may unconditionally waive the 2-year prior notification . . . ."

Treatment of grazing permits may differ somewhat from the treatment of grazing leases, depending upon the magnitude of the change in federal land acreage in the allotment. For section 15 leases, the preference granted by the Taylor Grazing Act (TGA) and the regulations is a preference to lease a specific tract of federal land for grazing purposes, based on ownership or control of contiguous nonfederal lands. Therefore, any change in federal land acreage would require canceling part or all of the lease, and would require a 2-year notice unless a waiver is obtained.

For section 3 permits, however, the preference granted by the TGA and regulations is a preference to make a certain amount of grazing use (in animal unit months) on federal lands. The preference is not tied as closely to a specific tract of federal land. Allotment boundaries (the "area of use") may be modified by changing the terms and conditions of the permit. As long as the permittee is still allowed the same amount of use, the permit or preference would not be canceled, in whole or in part. Consequently, small changes in federal land acreage, which do not require adjusting the permittee's preference, may be made without canceling any portion of the permit, and would not require a 2-year notice.

The above rationale should not be used to avoid making necessary adjustments in grazing use or to get around the requirement for a 2-year notice. This would only result in over obligation of the rest of the allotment and cause problems later. Notice should be sent as a matter of courtesy, even if not required.

**Notification.** The 2-year notification required by section 402(g) of the Federal Land Policy and Management Act (FLPMA) can be issued at any time, but should be sent as soon as possible following a determination that lands are likely to be devoted to another purpose or conveyed. For example, notification may be sent upon: receipt of an application for withdrawal, a planning decision identifying a tract or tracts for disposal, a favorable proposed classification decision or notice of allowance on an agricultural entry, receipt of a State indemnity selection for unsatisfied lieu entitlement, substantial agreement on a State or private exchange, issuance of a Notice of Realty Action (NORA) on a Recreation and Public Purposes (R&PP) petition-application, and, where use would be incompatible with grazing, issuance of the NORA for a FLPMA section 302 permit or lease. The key here is that the notice does not cancel any grazing rights, but merely sends notification to the permittee or lessee that their AUM's or leased lands may be reduced. The attached examples illustrate a notice to a grazing permittee/lessee and a sample waiver.

An exchange of land may be completed prior to the end of the 2-year notification period if the proponent will take the land subject to continued grazing use for at least 2 years from the date of notification. Such grazing use is to be under the same terms and conditions as authorized in the existing BLM permit/lease. If a waiver cannot be obtained and the proponent will not accept the continued grazing condition, conveyance of the federal land may not be made prior to the end of the 2-year notification period.

Issuance of a notice may be by letter describing a proposed disposal action, Notice of Exchange Proposal, or Notice of Decision. The notice must be served by certified mail or personal delivery to establish the date a permittee/lessee is notified of the pending action.

Actual cancellation of a permit/lease requires a grazing decision under 43 CFR 4110.4-2, and 43 CFR 4160. The grazing permit/lease should be canceled to the extent affected immediately prior to, or concurrent with, the administrative action which actually precludes or affects livestock use.

#### 2 Attachments

- 1 - Sample Grazing Notice to Permittee/Lessee (1 pg)
- 2 - Sample Grazing Cancellation Waiver (1 pg)

**H-2200-1 LAND EXCHANGE HANDBOOK**

## H-2200-1 LAND EXCHANGE HANDBOOK

### Appendix 1 - Grazing Notification Policy Attachment 1

#### Sample Grazing Notice to Permittee/Lessee

Certified Mail  
Return Receipt Requested

Mr. John Franklin  
P.O. Box 2456  
Caliente, Nevada 87509

Dear Mr. Franklin:

The following described land within your grazing allotment is under consideration for transfer in a proposed exchange.

<u>Description</u>	<u>Acres</u>	<u>Estimated Allotment/Lease</u>	<u>Grazing Capacity</u>
--------------------	--------------	--------------------------------------	-------------------------

The regulations in 43 CFR 4110.4-2(b) provide for a 2-year prior notification before any use may occur on your (permit/lease) that precludes livestock grazing. This letter constitutes official notice that BLM is considering a land exchange that could result in a partial reduction in your grazing privileges. If your (permit/lease) has less than 2 years remaining, a condition of the lease or conveyance will provide for your continued grazing use for a full 2 years from the date you receive this notice.

43 CFR 4110.4-2(b) also provides you an opportunity to waive the 2-year notification period. If you have no objections to the proposed action, please sign the enclosed waiver and returned it to this office. You will receive a Notice of Exchange Proposal (NOEP) which will inform you of the specific steps or actions and your opportunities to protest conveyance of the land, or provide input to the process.

Within thirty (30) days after the time the land is actually conveyed, you will also receive a grazing decision specifying the extent to which your BLM grazing (permit/lease) is being canceled. The grazing decision will be subject to protest under 43 CFR 4160.2 and/or appeal under 43 CFR 4.470.

If you have any questions concerning this notice or proposed exchange, please feel free to contact this office.

Sincerely,  
Authorized Officer

Enclosure:  
Grazing Waiver

**NOTE:** This letter notice is sent only after personal contact.

## H-2200-1 LAND EXCHANGE HANDBOOK

### Appendix 1 - Grazing Notification Policy Attachment 2

#### Sample Grazing Cancellation Waiver

I have discussed the proposed exchange of the following federal lands with representatives of the (District/Area) Office of the Bureau of Land Management (BLM).

Description of Lands to be <u>Conveyed</u>	<u>Acres</u>	<u>Allotment/Lease</u>	Estimated Grazing <u>Capacity</u>
--	--------------	------------------------	---

I understand that if I do not sign this waiver, the BLM will require the patentee to take the lands subject to my existing grazing authorization No. \_\_\_\_\_.

I agree to the proposed exchange of the lands without such condition. I also agree that the BLM may cancel, in whole or in part, my grazing preference to reflect the loss in forage arising from the exchange of federal lands supporting this preference. I further waive any right I have to a 2-year notice prior to the BLM canceling, in whole or in part, grazing authorization No. \_\_\_\_\_ resulting from the (lease/conveyance).

\_\_\_\_\_  
Signature  
Permittee/Lessee

\_\_\_\_\_  
BLM Authorized Officer



## **Record Notation Policy for Land Exchanges**

The final rulemaking for the Federal Land Exchange Facilitation Act of August 20, 1988 implements the exchange provisions of the Federal Land Policy and Management Act of 1976. The final regulations became effective December 17, 1993. The Act facilitates and expedites certain land exchanges under the authority of the Secretary of the Interior and the Secretary of Agriculture.

The segregative effect of exchanges on the federal lands is accomplished by notation of the public land records. When a proposal is made to exchange Federal lands the delegated official in the District/Resource Areas must ask the State Office to segregate the Federal lands by notation on the public land records. Record notation for purposes of 43 CFR 2091.3-1 and 2201.1-2 means notation to the Master Title Plats and the Historical Index. The entry and date on the Historical Index will be the date of segregation. Data entry to automated records systems (ALMRS) alone does not meet the record notation requirements as intended by the regulations.

Notification of the proposal to the State Office Records Unit may be by any of the following methods:

1. Send a memorandum with or without a case file requesting notation of the proposed land exchange. Case files will be returned to the respective field offices upon notation of the proposed exchange to the public land records (MTPs/HI's).
2. Send the memorandum by FAX; direct the document to the appropriate Unit in your State Office.
3. Send the memorandum by Groupwise or other Electronic method.

A Forest Service proposed exchanges will be handled in the same manner as in the past. Notification of the exchanges are received by the State Office through the U.S mail service. Your Public Room will enter the proposed exchange into ORCA/CR. Once the records are noted, the Title and Record Section will enter the appropriate action codes into ORCA/CR depicting the segregative effect on the federal lands.

As in the past, you must enter the proposed exchange into ORCA/CR. You are required to comply with the Data Standards set by WO IM-94-68 before record notation can take place on the MTPs/HIs.

The sooner the field manager notifies the State Office of the proposed exchange, the sooner the land can be segregated. The Title and Record Unit will note the records immediately upon notification from the field offices.

As a reminder, for land exchanges a Notice of Realty Action (NORA) is no longer the method used to segregate Federal lands.

**H-2200-1 LAND EXCHANGE HANDBOOK**

**Appendix 2 - Records Notation Policy**

## H-2200-1 LAND EXCHANGE HANDBOOK

### Appendix 3 Policy for Removal of Encumbrances (IM 97-08)

#### Policy on Removal of Encumbrances Prior to Conveyance of Title to Federal Land

Prior to conveyance of title to federal lands Field office managers must determine the validity of all encumbrances and remove any they decide are unnecessary .

##### 1. Verification of Encumbrances:

As part of case processing procedures, field offices should review all encumbrances on federal lands being considered for exchange or sale. This should include a review of master title plats and applicable case files to identify encumbrances or other authorizations. These encumbrances should be terminated if they no longer serve the purpose for which they were established. Appropriate measures should be taken to verify in writing with the holder, the continued use of and need for the encumbrance. Documentation of this verification should be included in the land exchange or sale case file.

##### 2. Review of Authorization:

Regulations require that rights-of-way be limited to those lands which will be occupied by the facilities authorized or are needed for the construction, operation, maintenance, or termination of the facility. The BLM Manual at 2801.6 provides guidance for the management of rights-of-way when federal lands are transferred. This guidance can also be used when considering the future of other types of valid encumbrances on federal lands being considered for exchange or sale.

##### 3. Conveyance of Encumbrance:

If there is a continuing need for any encumbrance, the administration and ownership of the encumbrance should be conveyed to the party acquiring the federal land if at all possible. If the BLM retains administration and ownership of any encumbrance, it should be limited to as short a time-period as reasonable. The least preferred alternative is for BLM to retain administration and ownership of encumbrances in perpetuity (except as provided in BLM Manual 2801.6). The need for all encumbrances shall be carefully reviewed prior to any renewal, assignment, or amendment. The appraised value of the Federal property being exchanged or sold should reflect the nature, extent, and time-period of any valid encumbrances.

## **H-2200-1 LAND EXCHANGE HANDBOOK**

### **Appendix 3 Policy for Removal of Encumbrances (IM 97-08)**

## H-2200-1 LAND EXCHANGE HANDBOOK

### Appendix 4 Guidelines for Transactions with Nonprofit Organizations

United States Department of the Interior

OFFICE OF THE SECRETARY  
WASHINGTON, D.C. 20240  
AUG 28, 1995

#### Memorandum

To: Director, Bureau of Land Management  
Director, National Park Service  
Director, U.S. Fish and Wildlife Service

From: Bonnie R. Cohen,  
Assistant Secretary-Policy, Management and Budget

Subject: Clarification to August 10, 1983 Guidelines for Transactions Between Nonprofit Organizations and Agencies of the Department of the Interior

These clarifications have been developed in response to the Inspector General's May 1992 Audit Report on land acquisitions conducted with the assistance of nonprofit organizations (Report No. 92-I-833). The guidelines apply to real estate transactions pursuant to letters of intent between nonprofit organizations and the National Park Service, U.S. Fish and Wildlife Service, Bureau of Land Management, and other agencies of the Department of the Interior utilizing funds appropriated from the Land and Water Conservation Fund.

For purposes of these guidelines, the term "nonprofit organization" shall include, but is not necessarily limited to, nonprofit organizations and other corporations or similar legal entities which acquire lands and interests therein for possible sale to the United States.

#### ***Introduction***

Because of the lengthy time requirements in the budgeting and appropriation process, Federal agencies are frequently unable to acquire land in response to imminent threats to critical resources or to buy needed resources under favorable terms. With the ability to act quickly in the private market and maintain flexible working relationships, nonprofit organizations can assist and support Federal land acquisition programs. However, the role of nonprofit organizations in acquiring land or interests in land for ultimate Federal acquisition must be clearly and carefully defined in each transaction in conformity with these guidelines.

#### ***General Policy***

Nonprofit organizations serve a very useful role in acquiring lands and interests in land having significant public values. Federal agencies are encouraged to work with such organizations and entities consistent with these guidelines.

#### ***Guidelines***

**1. No agency relationship.** Nonprofit organizations are not in any manner agents of the Federal Government unless an agency relationship is specifically designated in writing by mutual consent of the parties. Nonprofit organizations are typically private independent groups which freely negotiate real estate actions anywhere and anytime they desire and do so at their own risk. In transactions with the agencies of the Department of the Interior, nonprofit organizations shall not incur any liability or responsibility for payment of any relocation or other benefits under the Uniform Relocation Assistance and Land Acquisition Policies Act of 1970 (Public Law 91-646).

## H-2200-1 LAND EXCHANGE HANDBOOK

### Appendix 4 Guidelines for Transactions with Nonprofit Organizations

**2. Applicability to certain properties proposed for conveyance to the United States.** These guidelines do not apply to situations where the history of the transaction clearly demonstrates that the initial acquisition by the nonprofit organization was not made in contemplation of resale. Typically, factors such as the length of time between initial acquisition and proposed resale to the Government, the terms of the initial transaction, and the use of the property in the interim period will be considered. Each case will be determined on its own merits.

**3. Agency acquisition priorities.** Lands or interests in lands acquired from a nonprofit organization or other entity shall be accord with priorities set by the acquiring Federal agency, consistent with the agency's acquisition authorities, and limited to tracts that the agency has determined need to be acquired. Because of statutory, budgetary and policy considerations associated with any land acquisition transaction, the objectives of the Federal agencies must supersede those of the nonprofit organization.

**4. Areas of acquisition.** Lands or interests in land acquired by Federal agencies from nonprofit organizations must be within the boundaries of authorized areas or otherwise authorized by law.

**5. Letters of intent.** In each case where a nonprofit organization intends to acquire land for subsequent conveyance to a Federal agency and seeks prior assurance from the agency of its interest in and intent to take such a conveyance, the nonprofit may request and the agency may give a letter of intent to acquire. Such a letter of intent should also be used whenever an agency requests the assistance of a nonprofit organization in a proposed acquisition. If given by the Federal agency, the letter of intent to the nonprofit organization shall, at a minimum:

- (a) identify the land or interest in land which the agency desires to acquire;
- (b) state the estimated purchase price or other consideration subject to future appraisal;
- (c) state the projected time frame as to when the agency intends to acquire the property; and,
- (d) contain a statement indicating that should the agency be unable or decline to purchase the land within the projected time frame or at any time, disposition of the land or interests in land by the nonprofit organization or other entity is without liability to the Federal government.

**6. Access to records and financial information.** The acquiring Federal agency shall have the right to inspect the records of the nonprofit organization to verify the option price and other terms and conditions of any acquisition undertaken pursuant to a letter of intent, including all appraisals made of the property.

The nonprofit organization must be able to document and substantiate all expenses claimed in the transaction. Records shall be made available for inspection upon reasonable prior notice from the authorized representative of the Department.

**7. Prohibitions on interest payments by Federal agencies.** No agency shall pay nonprofit organizations for any interest incurred or foregone by the nonprofit organizations as a result of their participation in land acquisition transactions. (This practice has been discontinued since the Department of the Interior Solicitor's July, 1992 opinion which stated that there was no legal basis for making payments.

**8. Acquisitions.** In acquiring property from a nonprofit organization, a bureau of the Department of the Interior may pay either:

- a) the fair market value of the property, based upon the bureau-approved appraisal and agreed upon by the acquiring bureau and the nonprofit organization, or such lesser figure at which the nonprofit organization offers to sell the property; or
- b) the purchase price paid by the nonprofit organization to acquire the property from a third party, not to exceed the appraised fair market value approved by the acquiring bureau, plus related and associated expenses from a list approved by the Assistant Secretary for Policy, Management and Budget. The expenses shall be those which the Department would have incurred itself in acquiring the concerned property. Payment of a predetermined overhead cost may be approved in special cases subject to the approval of the Secretary.

## **H-2200-1 LAND EXCHANGE HANDBOOK**

### **Appendix 4 Guidelines for Transactions with Nonprofit Organizations**

**9. *Requirements for appraisals.*** Appraisals of land to be acquired from nonprofit organizations shall be prepared either by the purchasing agency or by an appraiser approved by such agency. Appraisals shall conform with the Uniform Appraisal Standards for Federal Land Acquisitions.

In addition, reviews of appraisals of land to be acquired from nonprofit organizations pursuant to letters of intent shall be no more than six months old in order to reflect current market analysis.

## **H-2200-1 LAND EXCHANGE HANDBOOK**

### **Appendix 4 Guidelines for Transactions with Nonprofit Organizations**



## H-2200-1 LAND EXCHANGE HANDBOOK

### Appendix 5 Dismissal of Protest by Assistant Secretary

## Requesting Assistant Secretary Dismissal of Protest

Land exchange protest dismissal packages submitted to the Washington Office (WO-350) for consideration by the Assistant Secretary, Land and Minerals Management (ASLM) should contain the following documents:

--	Background Information Paper	(transmit to WO by electronic mail)
--	Decision(s) (prepare for ASLM signature)	(transmit to WO by electronic mail)
--	Issue Summary Paper (1 page)	(transmit to WO by electronic mail)
--	Transmittal Memorandum (from the BLM Director to the ASLM)	(transmit to WO by electronic mail)
--	Transmittal Memorandum (from the State Director to the Director (350))	(transmit to WO by express mail)
--	Affidavit(s) or Proof of Publication	(transmit to WO by express mail)
--	Appraisal (if necessary)	(transmit to WO by express mail)
--	Environmental Assessment (if necessary)	(transmit to WO by express mail)
--	Map(s) (maps must be legible)	(transmit to WO by express mail)
--	Mineral Report (if necessary)	(transmit to WO by express mail)
--	Notice(s)	(transmit to WO by express mail)
--	Protest Letter(s)	(transmit to WO by express mail)
--	Regional Solicitor's Memorandum	(transmit to WO by express mail)

These documents are usually prepared or generated during land exchange case processing. You should transmit legible copies of these documents to the WO by express mail to ensure that the ASLM has sufficient and complete information available to reach a decision. You must provide strong documentation of the significant public interest and importance of the land exchange to justify consideration by the Assistant Secretary.

Prepare a separate WordPerfect file for each document. Do not insert the BLM letterhead. Use the Layout Page Numbering command to number the pages and a Times 12 pitch font.

WO-350 will assemble the package, obtain the necessary signatures and surnames, and transmit the package to the ASLM for approval. Expect at least a two week timeframe for processing most land exchange packages through the ASLM. For those land exchanges that are complex or involve controversial issues, it is important that the State Director or responsible field manager be available to assist in briefing the ASLM.

If the ASLM dismisses the protest, WO-350 will notify you by telephone and forward a copy of the approved package and the original copy of the approved decision(s) to your office by express mail. After telephone notification you may complete title transfer. When you receive the original copies of the decision(s) you are responsible for distribution via certified mail (return receipt requested).

We realize that unique situations may arise and submission requirements may vary over time. It may also be necessary to ask you to submit additional supporting documentation or information.

Refer to WO Information Bulletin 97-90 for examples of the required documents.